UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): March 27, 2007

eXegenics Inc.

(Exact Name of Registrant as Specified in Charter)

Delaware	**000-26648**	**75-2402409**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

4400 Biscayne Blvd **Suite 900** **Miami, Florida**	**33137**
(Address of Principal Executive Offices)	(Zip Code)

Registrant's telephone number, including area code: (305) 575-6015

1250 Pittsford-Victor Road
Building 200, Suite 280
Pittsford, New York, 14534

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01. Entry into a Material Definitive Agreement

The disclosures set forth in Item 2.01 to this Current Report are incorporated into this item by reference.

Item 2.01. Completion of Acquisition or Disposition of Assets.

On March 27, 2007, we completed an acquisition of (a) Froptix Corporation, a privately held Florida corporation ("Froptix"), and (b) Acuity Pharmaceuticals, Inc., a privately held Delaware corporation ("Acuity"), pursuant to a merger agreement and plan of reorganization, dated as of March 27, 2007 (referred to as the "Merger Agreement"), by and among eXegenics, Froptix, Acuity, e-Acquisition Company I-A, LLC, a Delaware limited liability company wholly owned by us, and e-Acquisition Company II-B, LLC, a Delaware limited liability company wholly owned by us.

The Merger Agreement provided for the merger of Froptix with and into e-Acquisition Company I-A, LLC, with e-Acquisition Company I-A, LLC surviving as our wholly-owned subsidiary (referred to as the "Froptix Merger") and the merger of Acuity with and into e-Acquisition Company II-B, LLC, with e-Acquisition Company II-B, LLC surviving as our wholly-owned subsidiary (referred to as the "Acuity Merger" and, with the Froptix Merger, the "Mergers"). In connection with the consummation of the Mergers (1) e-Acquisition Company I-A, LLC changed its name to Froptix, LLC, (2) e-Acquisition Company II-B, LLC changed its name to Acuity Pharmaceuticals, LLC and (3) we became the parent company of these two wholly-owned operating subsidiaries. We incurred normal acquisition related costs in connection with these transactions. Our trading symbol is "EXEG.OB." We intend to change our name to Opko Corporation in connection with our plan to apply for listing on the American Stock Exchange.

At the closing of the Mergers, the former stockholders of Froptix and Acuity received shares of our common stock and preferred stock as well as warrants to purchase our common stock in exchange for all of their shares of Froptix and Acuity.

As a result, at the closing of the Mergers, we issued (a) an aggregate of 61,775,002 shares of our common stock to the former holders of Froptix common stock, (b) an aggregate of 14,835,979 shares of our common stock to the former holders of Acuity common stock and Acuity Series A preferred stock, and (c) an aggregate of 457,584 shares of our Series C preferred stock, convertible into 45,758,400 shares of our common stock, to the former holders of Acuity Series B preferred stock. We also granted 21,144,114 warrants to purchase shares of our common stock to former stockholders of Froptix and Acuity.

Accounting Treatment

The accounting treatment of the acquisition of Froptix and Acuity by eXegenics was viewed to be a two-step process. In step one Froptix was deemed to be the accounting acquirer of eXegenics in what was accounted for as a reverse acquisition. In step two eXegenics acquired Acuity in a normal business combination.

Treatment of Warrants and Options

In connection with the Mergers, we assumed the obligations under outstanding warrants previously granted by Acuity to purchase 1,247,271 shares of Acuity common stock and 325,000 shares of Acuity Series B preferred stock and, in connection therewith, we issued warrants to purchase 7,214,730 shares of our common stock and 16,866 shares of Series C preferred stock to such Acuity warrant holders, convertible into 1,686,600 shares of our common stock.

Immediately before the closing of the Mergers, Froptix had outstanding options to purchase 65 shares of Froptix common stock and Acuity had outstanding options to purchase 2,191,619 shares of Acuity common stock and options to purchase 141,000 shares of Acuity Series B preferred stock. Pursuant to the terms of the Merger Agreement, the Company assumed all of the outstanding obligations under such options and, accordingly, the Company anticipates issuing 11,373,186 shares of its common stock and 7,317 shares of its Series C preferred stock, convertible into 731,700 shares of our common stock, upon the exercise of such options in lieu of shares of common stock of Froptix or common stock and/or preferred shares of Acuity.

Our board of directors plans to adopt and implement a new stock incentive plan within the coming months.

Escrow Agreement

As security for the respective customary indemnification obligations of Froptix and Acuity to the Company, 11.5% of the Company shares and warrants issued in connection with the Mergers will be held in escrow by us until March 25, 2008 such shares shall thereafter be released to the extent no claims for indemnification against such shares have been made.

Lock-Up Agreements

In connection with the Mergers, all of the former stockholders of Froptix and certain significant former stockholders of Acuity entered into "lock-up" agreements. Each lock-up agreement provides that the shares of the Company issued in the Mergers may not be, directly or indirectly, sold for a period of two years following completion of the Mergers. Restrictions under the lock-up agreements lapse with respect to one-third of the shares subject to the lock-up agreement on the first anniversary of the lock-up agreement and with respect to an additional one-third six months thereafter.

Registration Rights

Some of the former stockholders of Froptix and Acuity were granted certain rights with respect to the registration under the Securities Act of the sale of their shares issued in the Mergers. These rights may be triggered beginning on the first anniversary of the date of the Merger Agreement if we propose to register any of our securities under the Securities Act, either for our own account or for the account of other security holders exercising registration rights. Upon such registration, such holders will be entitled to notice of such registration and to include shares in the registration. These rights are subject to customary restrictions and exclusions as described in the Registration Rights Agreement.

Entry into Credit Agreement.

In connection with the consummation of the Mergers, we assumed the rights and obligations of Acuity under a line of credit that Acuity had with The Frost Group, LLC, a Florida limited liability company whose members include a trust controlled by Dr. Phillip Frost, who is the Company's Chief Executive Officer and Chairman of the board of directors, Dr. Jane H. Hsiao and Steven D. Rubin, directors of the Company. We also amended and restated this line of credit to provide additional available borrowing capacity. Under this amended and restated line of credit, we gained access to $8,000,000 in available borrowings and we assumed Acuity's existing obligation to repay $4,000,000 previously drawn down under the line of credit. The Company is obligated to pay interest on outstanding borrowings under the line of credit at a 10% annual rate. In connection with the assumption and amendment of the line of credit, the Company granted warrants to purchase 4,000,000 shares of eXegenics' common stock to The Frost Group, LLC.

FORM 10 DISCLOSURES

As disclosed elsewhere in this report, on March 27, 2007, we acquired Froptix and Acuity in the Mergers. Item 2.01(f) of Form 8-K states that if the registrant was a shell company, as we were immediately before the Mergers disclosed under Item 2.01, then the registrant must disclose the information that would be required if the registrant were filing a general form for registration of securities on Form 10 under the Securities Exchange Act of 1934, as amended.

Accordingly, we provide below the information that would be included in Form 10. Please note that the information provided below relates to the combined company after the acquisition of the Mergers, except that information relating to periods before the date of the Mergers only relates to eXegenics, unless otherwise specifically indicated.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This Current Report on Form 8-K , including the disclosures in accordance with Form 10, contain "forward-looking statements," as that term is defined under Private Securities Reform Act of 1995 (the "PSLRA"). Forward-looking statements include statements about our expectations, beliefs or intentions regarding our product development efforts, business, financial condition, results of operations, strategies or prospects. You can identify forward-looking statements by the fact that these statements do not relate strictly to historical or current matters. Rather, forward-looking statements relate to anticipated or expected events, activities, trends or results as of the date they are made. Because forward-looking statements relate to matters that have not yet occurred, these statements are inherently subject to risks and uncertainties that could cause our actual results to differ materially from any future results expressed or implied by the forward-looking statements. Many factors could cause our actual activities or results to differ materially from the activities and results anticipated in forward-looking statements. These factors include those described under the caption "*Risk Factors*" in Item 1A of these Form 10 disclosures, which are briefly listed below. We do not undertake any obligation to update forward-looking statements. We intend that all forward-looking statements be subject to the safe-harbor provisions of PSLRA. These forward-looking statements are only predictions and reflect our views as of the date they are made with respect to future events and financial performance.

Risks and uncertainties, the occurrence of which could adversely affect our business, include the following:

- We have a history of operating losses and we do not expect to become profitable in the near future.
- Our technologies are in an early stage of development and is unproven.
- Our drug research and development activities may not result in commercially viable products.
- We are highly dependent on the success of our lead product candidate, bevasiranib, and we cannot give any assurance that it will receive regulatory approval or be successfully commercialized.

- The results of previous clinical trials may not be predictive of future results, and our current and planned clinical trials may not satisfy the requirements of the U.S. Food and Drug Administration (the "FDA") or other non-U.S. regulatory authorities.
- We will require substantial additional funding, which may not be available to us on acceptable terms, or at all.
- If our competitors develop and market products that are more effective, safer or less expensive than our future product candidates, our commercial opportunities will be negatively impacted.
- Our drug development activities could be delayed or stopped.
- The regulatory approval process is expensive, time consuming and uncertain and may prevent us or our collaboration partners from obtaining approvals for the commercialization of some or all of our product candidates.
- Failure to recruit and enroll patients for clinical trials may cause the development of our product candidates to be delayed.
- Even if we obtain regulatory approvals for our product candidates, the terms of approvals and ongoing regulation of our products may limit how we manufacture and market our product candidates, which could materially impair our ability to generate anticipated revenues.
- Even if we receive regulatory approval to market our product candidates, the market may not be receptive to our products.
- If we fail to attract and retain key management and scientific personnel, we may be unable to successfully develop or commercialize our product candidates.
- As we evolve from a company primarily involved in development to a company also involved in commercialization, we may encounter difficulties in managing our growth and expanding our operations successfully.
- If we fail to acquire and develop other products or product candidates at all or on commercially reasonable terms, we may be unable to diversify or grow our business.
- We rely on third parties to manufacture and supply our product candidates.
- We currently have limited marketing staff and no sales or distribution organization. If we are unable to develop our sales and marketing and distribution capability on our own or through collaborations with marketing partners, we will not be successful in commercializing our product candidates.
- Independent clinical investigators and contract research organizations that we engage to conduct our clinical trials may not be diligent, careful or timely.
- The success of our business may be dependent on the actions of our collaborative partners.

- If we are unable to obtain and enforce patent protection for our products, our business could be materially harmed.
- If we are unable to protect the confidentiality of our proprietary information and know-how, the value of our technology and products could be adversely affected.
- We will rely heavily on licenses from third parties.
- We license patent rights to certain of our technology from third party owners. If such owners do not properly maintain or enforce the patents underlying such licenses, our competitive position and business prospects will be harmed.
- Our commercial success depends significantly on our ability to operate without infringing the patents and other proprietary rights of third parties.
- The Medicare prescription drug coverage legislation and future legislative or regulatory reform of the health care system may affect our ability to sell our products profitably.
- Failure to obtain regulatory approval outside the United States will prevent us from marketing our product candidates abroad.
- Non-U.S. governments often impose strict price controls, which may adversely affect our future profitability.
- Our business may become subject to economic, political, regulatory and other risks associated with international operations.
- The market price of our common stock may fluctuate significantly.
- Trading of our common stock is limited and trading restrictions imposed on us by applicable regulations and by lockup agreements we have entered unto with our principal stockholders may further reduce our trading, making it difficult for our stockholders to sell their shares.
- Because our common stock may be a "penny stock," it may be more difficult for investors to sell shares of our common stock, and the market price of our common stock may be adversely affected.
- Directors, executive officers, principal stockholders and affiliated entities own a significant percentage of our capital stock, and they may make decisions that you do not consider to be in your best interests or in the best interests of our stockholders.
- Compliance with changing regulations concerning corporate governance and public disclosure may result in additional expenses.

* * * * *

Except where the context otherwise requires, the terms, "we," "us," "our," "the Company," or "eXegenics" refer to the business of eXegenics Inc. and its consolidated subsidiaries: "Froptix" or "Froptix, LLC" refers to the business of Froptix, LLC, our wholly-owned subsidiary and, "Acuity" or "Acuity Pharmaceuticals" refers to the business of Acuity Pharmaceuticals, LLC, our wholly-owned

subsidiary. Froptix and Acuity are the Company's two operating subsidiaries and comprise all of the operations of the Company as of the date of this Current Report.

Item 1. Business.

eXegenics was incorporated in the State of Delaware in November 1991. eXegenics was previously involved in the research, creation, and development of drugs for the treatment and/or prevention of cancer and infectious diseases. Before the consummation of the Mergers, we ceased all operations relating to our historical business and adopted, upon consummation of the Mergers, the business plan of Froptix and Acuity, each of which is now a wholly-owned subsidiary of ours. Set forth below in this section entitled "Business" is a description of our new businesses. You should read the following discussion in conjunction with our Consolidated Financial Statements and the related Notes, the Financial Statements of Froptix, the Financial Statements of Acuity and the pro forma financial statements contained in this Current Report on Form 8-K.

Company Overview

We are a clinical-stage biopharmaceutical company focused on the development of innovative therapies for the treatment and prevention of ophthalmic disease. To date, we have concentrated our resources to address ophthalmic disease in large and growing markets by employing a powerful and rapidly progressing technology, known as RNA Interference (RNAi), to develop our lead product candidate, bevasiranib sodium (referred to herein as bevasiranib and formerly known as Cand5). Bevasiranib is a small interfering RNA (siRNA) therapeutic targeting vascular endothelial growth factor (VEGF), which we are developing as an intravitreal injection for the treatment of wet age-related macular degeneration (Wet AMD) and other related ocular conditions.

We have utilized our expertise in ophthalmology and RNAi to take bevasiranib from the laboratory through animal models and rapidly, efficiently and safely move it into clinical trials. We have completed a Phase II clinical trial studying the use of bevasiranib as a treatment for Wet AMD. Bevasiranib demonstrated safety and an efficacy profile in our Phase II clinical trial for Wet AMD in 129 patients. Top-line results showed bevasiranib to be safe and well tolerated, with a dose-related effect evident across multiple endpoints including near vision, lesion size (CNV) and time to rescue. Based on the results of this trial, we expect to begin the next stage of clinical trials in 2007.

Significant scientific evidence suggests that the presence in the eye of elevated levels of VEGF plays an important role in causing abnormal blood vessel growth and blood vessel leakage. We believe that bevasiranib will be competitive with existing and anticipated therapies for Wet AMD as it addresses the underlying source of VEGF production, rather than neutralizing existing VEGF that has already been active in the disease pathogenesis. We are also developing product candidates for the treatment of Wet AMD, which target other pathways involved in the pathogenesis of Wet AMD, including HIF-1α.

We have licensed a novel formulation of an antimicrobial compound which has been tested in early stage clinical trials. We plan to pursue additional clinical trials in patients with viral conjunctivitis this year.

We are also in the early stages of developing treatments for two other retinal degenerative diseases: dry age-related macular degeneration ("Dry AMD") and retinitis pigmentosa ("RP"). We plan to develop therapeutic products to arrest and potentially reverse vision loss resulting from Dry AMD and RP.

We plan to leverage our strengths to further develop a pipeline of product candidates for ophthalmic indications that will employ RNAi and other novel technologies. Among the indications that we may pursue are ocular inflammatory disorders, including uveitis, glaucoma, and cataracts.

We also plan on using our expertise and resources to expand our business to include other types of ophthalmic products beyond therapeutics. These efforts may lead to our acquiring or developing products which aid in the treatment and diagnosis of diseases of the eye to improve vision health of patients. The product types may include diagnostic retina imaging instruments and other ophthalmic devices.

Market Opportunity

Ophthalmic diseases can be caused by many factors and can affect both the front and back of the eye. In the developed world, the major ophthalmic diseases that result in loss of vision include cataracts, glaucoma, Age Related Macular Degeneration (AMD), and Diabetic Retinopathy. There are two forms of AMD, termed wet and dry. Dry AMD affects over 35 million patients in developed countries and many of these patients risk vision loss directly or may progress to Wet AMD with resulting risk of loss of vision. Additionally, RP, fortunately a rarer disease, frequently afflicts patients in their youth and causes progressive total loss of vision. Loss of vision has a major impact on the quality of life and independence for those afflicted, causing both economic and personal hardship on those afflicted and their families. Many significant ophthalmic disorders are age dependent.

The ophthalmic therapeutic market is driven by:

- An aging population with vision destroying disorders;
- Diabetes (Type I and II) growing at epidemic proportions;
- An active and increased life expectancy among the aging baby-boomer generation;
- Sub-optimal and ineffective therapies;
- Emerging technologies to treat ophthalmic diseases; and
- Activist patients and physicians seeking alternatives to currently available treatments.

We have prioritized the opportunities within ophthalmology that we believe combine attractive markets with an emerging understanding of disease pathways. We have found that five of these pathways cross many of the largest and fastest growing ophthalmic indications. These pathways include angiogenesis, infection, fibrosis, inflammation and drusen. Within these pathways, we have identified molecular targets which we believe are susceptible to therapeutic intervention.

Dry AMD is much more common than Wet AMD and is characterized by the presence of drusen and loss of retinal pigment epithelial (RPE) cells in the retina. Drusen are small, yellowish deposits that form within the layers of the retina. It is estimated that 10% of the patients with Dry AMD develop into the wet form. Both forms of AMD can eventually lead to blindness. Currently there is no known proven pharmaceutical therapy for Dry AMD.

There are an estimated 12 to 15 million patients in the United States, and over 35 million patients in developed countries, with Dry AMD with no treatment options. Age is the main risk factor for AMD, and the number of cases of AMD is expected to increase significantly as the population ages. It is estimated that more than 2.8 million Americans will suffer from visual impairment as a result of AMD by

the year 2030, approximately double the number today. Untreated AMD can significantly decrease the affected individual's quality of life.

RP is a group of inherited eye diseases that cause the degeneration of cells in the retina. As these cells degenerate and die, patients experience progressive vision loss. RP is relatively rare. It affects 50,000 to 100,000 people in the United States. Worldwide, approximately 1.5 million people are afflicted.

Bevasiranib for Wet AMD

We have an exclusive license to commercialize bevasiranib, which is an siRNA that works to silence the gene that promotes the overgrowth of blood vessels that leads to vision loss in Wet AMD, a leading cause of adult blindness in the developed world. Bevasiranib is a synthetic double stranded RNA (dsRNA) oligonucleotide. We believe that bevasiranib selectively inhibits the production of all isoforms of VEGF by efficiently and effectively halting the production of the protein on the mRNA level. VEGF has been shown to be the central stimulus in the development of ocular neovascularization. Bevasiranib is administered locally to the eye via an intravitreal injection, a common office procedure performed by retinal specialists.

We believe that bevasiranib may contribute to better patient outcomes and compliance than would be achieved with the current antagonist-based standard of care alone. Bevasiranib has been shown to proactively shut down the production of VEGF and we believe that it will have safety and efficacy advantages over other therapies, which inhibit VEGF only after it has already been produced in the eye. Based on our bevasiranib Phase II clinical trial results, we envision three potential therapeutic profiles for bevasiranib in the marketplace, including maintenance and combination therapy, monotherapy and prophylactic treatment. We are currently planning the Phase III clinical trials for bevasiranib, designed to target an initial label for maintenance therapy.

Clinical Results and Program Status of Bevasiranib

We completed a Phase II clinical trial for the use of bevasiranib in the treatment of Wet AMD. The following table summarizes the status of our material clinical trials of bevasiranib to date:

Indication	Trial Name	Phase	Objectives	Number of Patients	Enrollment Status
Wet AMD	CARE Trial	Phase II	Safety Dosage Efficacy	129	Complete
Wet AMD	NA	Phase I	Safety	15	Complete
DME	RACE Trial	Phase II	Safety Dosage Efficacy	48	Complete

Total research and development expenses were $8,534,000, $8,482,000, and $3,604,000 during 2006, 2005 and 2004 respectively, and primarily related to the development of bevasiranib.

Clinical Trials for the Treatment of Wet AMD

C.A.R.E.™ Trial — Phase II Clinical Trial for Wet AMD. The "Cand5 Anti-VEGF RNAi Evaluation (CARE study)," our 129 patient Phase II clinical study in patients with predominantly and minimally classic Wet AMD was completed successfully. The outcome of this Phase II was positive and represents what we believe to be the first clinical proof of concept of an siRNA based therapy.

The results of the CARE study demonstrated that bevasiranib is safe and well tolerated for doses up to 3.0 mg/eye. Visual acuity outcomes taken both at distance and near, as well the inhibition of the growth of CNV (choroidal neovascularization), demonstrated the biological effects of RNA interference based VEGF suppression. All three dose levels of bevasiranib demonstrated efficacy as determined by comparisons to the expected natural history of disease progression as found in untreated patients in previous clinical trials with a similar patient population, however no statistical significance for dose response was observed for changes in distance visual acuity from baseline in this trial. There were trends across multiple endpoints that showed a dose dependent effect. While these initial findings remain to be expanded and confirmed in Phase III clinical trials, we found that bevasiranib was safe at doses up to 3.0 mg per eye.

Phase I Clinical Trial for Wet AMD. Our Phase I trial was an open label, dose escalation study that included 15 patients and tested five dose levels administered by intravitreal injection at six-week intervals. Bevasiranib was shown to be safe and well tolerated following repeat administration of the escalating dose levels, up to 3.0 mg per eye.

This study was also the first for an ocular anti-VEGF agent to include a pharmacokinetic analysis indicating that the study drug was not present in the plasma of any of the patients at any of the doses tested. This absence of systemic exposure to bevasiranib is significant because VEGF antagonists have been shown to have the potential for systemic side effects.

Clinical Trials for the Treatment of DME

R.A.C.E.™ Trial — Phase II Clinical Trial for DME. The RNAi Assessment of bevasiranib in Diabetic Macular Edema, or R.A.C.E.™ trial, was a pilot phase II investigation of the safety and preliminary efficacy of bevasiranib in patients with DME. This 48 patient multi-center, double-masked and randomized trial studied three dose levels of bevasiranib.

Commercial Potential

Based on our bevasiranib Phase II clinical trial results, we believe there are three potential therapeutic profiles for bevasiranib in the marketplace, including (1) maintenance and combination therapy, (2) monotherapy treatment and (3) prophylactic treatment.

Maintenance and Combination Therapy. We anticipate bevasiranib being used by itself or in combination with other therapies sequentially following an initiation therapy with an approved VEGF antagonist drug. After the antagonist has absorbed extracellular VEGF, bevasiranib could be used in order to suppress the formation of new VEGF and maintain a patient's vision. When used in combination with other therapies, bevasiranib's sustained VEGF suppression may add to antagonist's activity, and provide a better outcome than that on VEGF antagonist alone.

Monotherapy. It is possible that not all patients will require the VEGF antagonist initiation regimen due to low VEGF load at time of diagnosis. These patients may get the full benefit from bevasiranib alone.

Prophylactic Therapy. Certain patients who do not yet have the wet form of AMD may be determined by their physician as being at high risk for progressing to the wet form. Future studies may show that bevasiranib could prevent these high risk patients from progressing to the wet form of AMD.

ACU-NCT-001 for Viral Conjunctivitis

We have a worldwide exclusive license to commercialize ophthalmic indications using ACU-NCT-001. This is a proprietary formulation of the N-chloro derivative of the amino acid taurine (referred to herein as NCT). NCT is a naturally occurring microbicidal oxidant that is produced by stimulated granulocytes and monocytes via the enzyme myeloperoxidase. Researchers in Austria have completed pilot clinical trials using NCT where it has been shown to have promising antiseptic activity for viral conjunctivitis and to be safe and well-tolerated. Pre-clinical studies have shown that ACU-NCT-001 will enhance NCT's activity against bacteria, virus and fungi and its penetration of activity through the cornea. ACU-NCT-001 is designed to combine broad-spectrum anti-infective activity with very good tolerability, and its natural sterility and absence of preservatives make it a good candidate for ocular applications. The first indication we plan to pursue for ACU-NCT-001 is viral conjunctivitis.

ACU-HHY-011 for Wet AMD

We have a worldwide exclusive license to commercialize ACU-HHY-011, which is an siRNA targeting HIF-1α, believed to be the most important transcription factor involved in the cellular response to hypoxia, a key step in the neovascularization process which occurs in Wet AMD. HIF-1α is upstream of the target for bevasiranib and preclinical data suggests that targeting HIF-1α may have advantages over other approaches to treating Wet AMD. HIF-1α modulates the expression of more than 60 genes, including multiple angiogenic factors under hypoxic conditions, such as VEGF, angiopoietin-1, angiopoietin-2, placental growth factor and platelet-derived growth factor-B.

ACU-XSP-001 for Uveitis

We have entered into an option agreement to acquire an exclusive license in the field of ophthalmology to commercialize ACU-XSP-001. ACU-XSP-001 is an siRNA that silences the syk-kinase gene, a key cell-signaling molecule that has been shown to be central in initiating critical elements of the inflammatory response in a number of disease models. Syk-kinase is essential for the activation of signaling pathways that lead to the release of allergic mediators such as cytokines and histamine that cause an inflammatory response. We believe that ACU-XSP-001 will have utility in the treatment of inflammatory conditions of the eye, including uveitis and allergic conjunctivitis, and that it also may have the potential to prevent the inflammation that contributes to vision loss in conditions such as Wet AMD. The siRNA has been tested extensively by its inventors in animal models of asthma and pulmonary inflammation via intranasal delivery where it inhibited inflammation and bronchoconstriction.

ACU-HTR-00X for Anti-Fibrosis

We have a worldwide exclusive license in the field of ophthalmology to commercialize siRNAs targeting transforming growth factor-b receptor Type II (TbRII), which is an important mediator of wound healing and has been shown to play a significant causative role in ocular inflammation and scarring.

Compounds for Dry AMD and RP

We have a worldwide exclusive license to commercialize compounds from the University of Florida Research Foundation which have potential to treat Dry AMD by eliminating disease-causing

accumulations of protein molecules at the back of the eye. Proteins must fold into their correct three-dimensional conformation to achieve their biological function. Protein aggregation and misfolding are contributors to many human diseases, such as autosomal dominant retinitis pigmentosa, Alzheimer's disease, and cystic fibrosis. The loss of vision associated with Dry AMD is thought to be caused by the destructive effects of the misfolded protein and debris aggregates likes lipofuscin. Autophagy is a cellular process by which cellular protein aggregates and dysfunctional organelles like mitochondria are degraded. If methods for increasing autophagy were available, they might enhance the elimination of misfolded proteins, and eliminate the destructive effects associated with their accumulation. These compounds may mitigate retinal degeneration, particularly retinal and macular degeneration as demonstrated in experiments demonstrating their ability of preserving healthy cells at the back of the eye.

Our licensed technology from the University of Florida Research Foundation also includes small molecules that can recruit bone marrow-derived stem cells to the eye. These drug candidates may be administered intraocularly or systemically. Our lead compound induces the expression of a potent cytokine that causes the recruitment of stem cells to various organs including the eye. Clinical studies have shown that elderly patients have reduced levels of bone marrow-derived stem cells in their circulation. These cells may be mobilized from the bone marrow to enter the systemic circulation for recruitment to the retina. Using our compounds, it might be possible to initiate cellular repair of the cell layers at the back of the eye. This type of cellular therapy may represent a practical treatment for Dry AMD and RP.

Intellectual Property

We believe that technology innovation is driving breakthroughs in vision healthcare. We have adopted a comprehensive intellectual property strategy which blends the efforts to innovate in a focused manner with the efforts of our business development activities to strategically in-source intellectual property rights.

We develop, protect and defend our own intellectual property rights as dictated by the developing competitive environment. We value our intellectual property assets and believe we have benefited from early and insightful efforts at understanding the interface between the ophthalmic pathophysiology and the molecular basis of potential pharmaceutical intervention.

In total, we own or have exclusively licensed more than six issued patents in the United States and three foreign patents, as well as more than 100 U.S., foreign patent applications.

We have exclusively licensed technology, patents and patent applications from the University of Pennsylvania related to siRNA directed to specific mRNA targets for therapeutic use. These applications include targeting vascular endothelial growth factor (VEGF), hypoxia-inducible factor 1 alpha (HIF-1α), and intracellular adhesion molecules (ICAM), among other therapeutic targets.

We have exclusively licensed technology, patents and patent applications from Intradigm Corporation related to the treatment of ophthalmic diseases characterized by excessive neovascularization, angiogenesis or leakage and drug delivery technology.

We have exclusively licensed patent applications from Pathogenics, Inc. related to N-chlorotaurine.

We have also exclusively licensed U.S. and foreign patent applications from the University of Illinois related to siRNA targeting TGF-bRII for the treatment of ophthalmic diseases.

We have exclusively licensed technology and patent applications from the University of Florida Research Foundation related to the use of compounds to treat certain ophthalmic disorders including Dry AMD and RP.

We also have an option to acquire an exclusive license in the field of ophthalmic diseases in humans to an additional five U.S. patents, one U.S. patent application, as well as five foreign patents and ten foreign patent applications related to syk-kinase.

Licenses and Collaborative Relationships

Our strategy is to develop a portfolio of product candidates through a combination of internal development and external partnerships. Collaborations are key to our strategy and we continue to build relationships and forge partnerships with companies both inside and outside of ophthalmology. Over the past 36 months, we have completed strategic deals with the Trustees of the University of Pennsylvania, the University of Illinois, the University of Florida Research Foundation, Intradigm Corporation, and Pathogenics, Inc. We have also entered into an option agreement to acquire exclusive licenses in the field of ophthalmology from ZaBeCor Pharmaceutical Company.

The Trustees of the University of Pennsylvania: In March 2003, we entered into two world-wide exclusive license agreements with The Trustees of the University of Pennsylvania (the "University of Pennsylvania") to commercialize siRNA targeting VEGF, HIF-1α, ICAM and other therapeutic targets. In consideration for the licenses, we are obligated to make certain milestone payments to the University of Pennsylvania. We also agreed to pay the University of Pennsylvania earned royalties based on the number of products we sell that use the inventions claimed in the licensed patents. We agreed to use commercially reasonable efforts to develop, commercialize, market and sell such products covered by the license agreements.

The term of the agreements is for the later of the expiration or abandonment of the last patent or ten years after the first commercial sale of the first licensed product. We may terminate either of the agreements upon sixty days' prior written notice. The University of Pennsylvania may terminate either of the agreements if we are more than ninety days late in a payment owed to the University of Pennsylvania, we breach the agreements and do not cure within ninety days after receiving written notice from the University of Pennsylvania, if we become insolvent or we are involved in bankruptcy proceedings.

Intradigm Corporation: In June 2005, we entered into a license and collaboration agreement with Intradigm Corporation ("Intradigm") for intellectual property covering the treatment of ophthalmic diseases characterized by excessive neovascularization, angiogenesis or leakage. Under the terms of the agreement, we have agreed to develop a topical siRNA pursuant to a mutually agreeable research and development plan under the direction of a joint development committee (JDC). Each party agreed to commit personnel, equipment, and resources to perform its obligations under the research and development plan.

After the topical siRNA compound is selected by the JDC, we are obligated to use commercially reasonable efforts to obtain regulatory approval for the topical siRNA in the United States and any foreign country we choose, at our sole discretion and sole expense. We are also obligated to use commercially reasonable efforts to market, distribute and sell the topical siRNA in the United States and any selected foreign country. We have agreed to pay to Intradigm certain milestone payments upon the achievement of specified milestones and royalty payments on all net sales of the topical siRNA and other licensed products.

The term of the agreement is twenty years, unless earlier terminated in accordance with the agreement. Either party may terminate upon mutual written consent, upon written notice by a party if the

other party dissolves or enters into bankruptcy or insolvency proceedings, or upon ninety days prior written notice of a material breach of the agreement without cure.

Pathogenics, Inc.: In April 2006, we entered into a world wide license agreement with Pathogenics, Inc. ("Pathogenics") to commercialize N-chlorotaurine for the treatment of ophthalmic disease or infection. We were also granted non-exclusive rights to all data resulting from a Phase I clinical trial with N-chlorotaurine in Austria. We agreed to use commercially reasonable efforts to develop and commercialize the licensed product, including commercially reasonable efforts to initiate pre-clinical activities necessary to file an IND with the U.S. Food and Drug Administration, or FDA, to initiate a Phase I clinical trial for N-chlorotaurine for an ophthalmic indication. Pathogenics will have a non-exclusive right to such information for the treatment of non-ophthalmic diseases or infections.

We are obligated to pay to Pathogenics certain milestone payments and royalty payments on net sales of licensed products. We are also obligated to pay Pathogenics an annual minimum payment if the total payments made for such year are less than a specified minimum amount. The term of the agreement is for the shorter of twenty years or the last to expire of the Pathogenics intellectual property. We may terminate the agreement for any reason upon written notice. The agreement may be terminated upon mutual written consent of the parties, by either party upon written notice if either party dissolves or is involved in a bankruptcy or insolvency proceeding or upon ninety days prior written notice if the other party is in material breach and fails to cure.

The Board of Trustees of the University of Illinois: In August 2006, we entered into an exclusive world wide license agreement with The Board of Trustees of the University of Illinois (the "University of Illinois") to commercialize intellectual property related to ophthalmic siRNA targeting TGF-bRII for the treatment of ophthalmic disease. The license agreement obligates us to pay to the University of Illinois certain milestone payments and royalty payments on all net sales of licensed products and an annual license fee payment.

ZaBeCor Pharmaceutical Company: In June 2006, we entered into a material transfer agreement with ZaBeCor Pharmaceutical Company, LLC ("ZaBeCor") under which ZaBeCor provided us with instructions to make a certain siRNA therapeutic directed to syk-kinase and granted us the right to evaluate the potential use of the siRNA derived therapeutic for the treatment of ophthalmic diseases in humans for the period of one year. We were also granted a one-year option to acquire an exclusive license to certain of ZaBeCor's patents related to the siRNA therapeutic for the therapy of ophthalmic diseases in humans. If we enter into the license agreement, we will be obligated to pay to ZaBeCor certain milestone payments in cash and common stock and royalty payments on all net sales of licensed products.

University of Florida Research Foundation. In April 2006, we entered into three world-wide exclusive license agreements with the University of Florida Research Foundation. The license agreements obligate us to pay to University of Florida Research Foundation royalty payments on all net sales of licensed products. We agreed to use our commercially reasonable activities to commercialize products. The technology licensed from the University of Florida Research Foundation includes autophagy inducing compounds which are designed to enhance the elimination of misfolded proteins, and eliminate the destructive effects associated with their accumulation, compounds that affect important intracellular pathways which lead to the accumulation of properly folded mutant proteins and potential drug candidates that are designed to recruit stem cells which may aid in delaying or reversing the damage at the back of the eye associated with several retinal diseases including Dry AMD and RP. The term of each of the agreements is for the earlier of the date that no licensed patent remains an enforceable patent or the payment of earned royalties under the agreement once begun, ceases for more than two calendar quarters. We may terminate any of the agreements upon sixty days' prior written notice. The University

of Florida Research Foundation may terminate any of the agreements if we are more than sixty days late, after written demand for a payment owed to the University of Florida Research Foundation, if we breach the agreements and do not cure within sixty days after receiving written notice from the University of Florida Research Foundation or if we become involved in bankruptcy proceedings.

Concurrent with the license agreement, we entered into a sponsored research agreement with the University of Florida pursuant to which the University of Florida, under the supervision of Dr. Shalesh Kaushal, our Chief Scientific Officer, conducts research on our behalf, under the technologies licensed to us from the University of Florida Research Foundation. The research agreement obligates us to pay to the University of Florida a total of $1,500,000, payable in bi-annual payments of $250,000. Pursuant to this research agreement, we were granted the first option to obtain a royalty-bearing license to any intellectual property developed by the University of Florida pursuant to this research agreement, on the same terms and conditions as the licenses outlined above. The term of the agreement is for three years expiring on April 7, 2009 and may be extended upon mutual agreement of the parties. Either party may terminate this agreement upon ninety days prior written notice to the other or immediately if the other party breaches the agreement and does not cure such breach within ninety days after receiving notice of the breach.

Competition

The Wet AMD market is highly competitive within the pharmaceutical industry due to the large number of products competing for market share and significant levels of commercial resources being utilized to promote those products. In addition, our ability to compete may be affected because in some cases insurers and other third-parties may seek to encourage the use of less expensive products. This may have the effect of making our products less attractive, from a cost perspective, to buyers. Among the products with which we will directly compete, we expect to differentiate on the basis of enhanced safety and tolerability. Several pharmaceutical and biotechnology companies are actively engaged in research and development related to new treatments for Wet AMD. We cannot predict the basis upon which we will compete with new products marketed by others. Many of our competitors have substantially greater financial, operational, sales and marketing and research and development resources than we have.

Government Regulation of our Drug Development Activities

The United States federal government regulates healthcare through various agencies, including but not limited to the following: (i) the FDA, which administers the Federal Food, Drug, and Cosmetic Act (FDCA), as well as other relevant laws; (ii) the Center for Medicare & Medicaid Services (CMS), which administers the Medicare and Medicaid programs; (iii) the Office of Inspector General (OIG) which enforces various laws aimed at curtailing fraudulent or abusive practices, including by way of example, the Anti-Kickback Law, the Anti-Physician Referral Law, commonly referred to as Stark, the Anti-Inducement Law, the Civil Money Penalty Law, and the laws that authorize the OIG to exclude healthcare providers and others from participating in federal healthcare programs; and (iv) the Office of Civil Rights, which administers the privacy aspects of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). All of the aforementioned are agencies within the Department of Health and Human Services (HHS). Healthcare is also provided or regulated, as the case may be, by the Department of Defense through its TriCare program, the Department of Veterans Affairs, especially through the Veterans Health Care Act of 1992, the Public Health Service within HHS under Public Health Service Act § 340B (42 U.S.C. § 256b), the Department of Justice through the Federal False Claims Act and various criminal statutes, and state governments under the Medicaid and other state sponsored or funded programs and their internal laws regulating all healthcare activities.

The testing, manufacture, distribution, advertising and marketing of drug products are subject to extensive regulation by federal, state and local governmental authorities in the United States, including the FDA, and by similar agencies in other countries. Any product that we develop must receive all

relevant regulatory approvals or clearances, as the case may be, before it may be marketed in a particular country.

The regulatory process, which includes overseeing preclinical studies and clinical trials of each pharmaceutical compound to establish its safety and efficacy and confirmation by the FDA that good laboratory, clinical and manufacturing practices were maintained during testing and manufacturing, can take many years, requires the expenditure of substantial resources, and gives larger companies with greater financial resources a competitive advantage over us. Delays or terminations of clinical trials that we undertake would likely impair our development of product candidates. Delays or terminations could result from a number of factors, including stringent enrollment criteria, slow rate of enrollment, size of patient population, having to compete with other clinical trials for eligible patients, geographical considerations and others.

The FDA review process can be lengthy and unpredictable, and we may encounter delays or rejections of our applications when submitted. Generally, in order to gain FDA approval, we must first conduct preclinical studies in a laboratory and in animal models to obtain preliminary information on a compound and to identify any safety problems. The results of these studies are submitted as part of an IND application that the FDA must review before human clinical trials of an investigational drug can commence.

Clinical trials are normally done in three sequential phases and generally take two to five years or longer to complete. Phase I consists of testing the drug product in a small number of humans, normally healthy volunteers, to determine preliminary safety and tolerable dose range. Phase II usually involves studies in a limited patient population to evaluate the effectiveness of the drug product in humans having the disease or medical condition for which the product is indicated, determine dosage tolerance and optimal dosage and identify possible common adverse effects and safety risks. Phase III consists of additional controlled testing at multiple clinical sites to establish clinical safety and effectiveness in an expanded patient population of geographically dispersed test sites to evaluate the overall benefit-risk relationship for administering the product and to provide an adequate basis for product labeling. Phase IV clinical trials may be conducted after approval to gain additional experience from the treatment of patients in the intended therapeutic indication.

After completion of clinical trials of a new drug product, FDA and foreign regulatory authority marketing approval must be obtained. Assuming that the clinical data support the product's safety and effectiveness for its intended use, a New Drug Application (NDA) is submitted to the FDA for its review. Generally, it takes one to three years to obtain approval. If questions arise during the FDA review process, approval may take a significantly longer period of time. The testing and approval processes require substantial time and effort and we may not receive approval on a timely basis, if at all, or the approval that we receive may be for a narrower indication than we had originally sought, potentially undermining the commercial viability of the product. Even if regulatory approvals are obtained, a marketed product is subject to continual review, and later discovery of previously unknown problems or failure to comply with the applicable regulatory requirements may result in restrictions on the marketing of a product or withdrawal of the product from the market as well as possible civil or criminal sanctions. For marketing outside the United States, we also will be subject to foreign regulatory requirements governing human clinical trials and marketing approval for pharmaceutical products. The requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary widely from country to country.

None of our products under development has been approved for marketing in the United States or elsewhere. We may not be able to obtain regulatory approval for any such products under development in a timely manner, if at all. Failure to obtain requisite governmental approvals or failure to obtain

approvals of the scope requested will delay or preclude us, or our licensees or marketing partners, from marketing our products, or limit the commercial use of our products, and thereby would have a material adverse effect on our business, financial condition and results of operations. See "Risk Factors—The results of previous clinical trials may not be predictive of future results, and our current and planned clinical trials may not satisfy the requirements of the FDA or other non-U.S. regulatory authorities."

Manufacturing

We have no manufacturing facilities and we currently do not intend to build manufacturing facilities of our own in the foreseeable future. We have entered into agreements with various third parties for the formulation and manufacture of our clinical supplies. These suppliers and their manufacturing facilities must comply with FDA regulations, current good laboratory practices, or cGLPs, and current good manufacturing practices, or cGMPs. We plan to outsource the manufacturing and formulation of our clinical supplies.

Sales & Marketing

We currently do not have sales or marketing personnel. In order to commercialize any products that are approved for commercial sale, we must either build a sales and marketing infrastructure or collaborate with third parties with sales and marketing experience. We may build our own sales and marketing infrastructure to market some of our product candidates targeting retinal specialists either in certain regions or collaborate with a company established in this industry to market and sell our products, if approved.

Employees

As of March 31, 2007, we have 17 full-time employees, 7 of who hold advanced degrees. We plan to add to our headcount in key functional areas that will allow us to further the development of our product candidates. None of our employees are represented by a collective bargaining agreement.

Glossary of Terms

"**ACU-HHY-011**" is an siRNA targeting HIF-1α, believed to be the most important transcription factor involved in the cellular response to hypoxia, a key step in the neovascularization process which occurs in Wet AMD.

"**ACU-NCT-001**" is a proprietary formulation of the N-chloro derivative of the amino acid taurine (referred to herein as NCT).

"**ACU-XSP-001**" is an siRNA that silences the syk-kinase gene, a key cell-signaling molecule that has been shown to be central in initiating critical elements of the inflammatory response in a number of disease models.

"**AMD**" is Age Related Macular Degeneration.

"**Bevasiranib"** is a small interfering RNA (siRNA) therapeutic targeting vascular endothelial growth factor.

"**Cand5 Anti-VEGF RNAi Evaluation (CARE study)**" is our 129 patient Phase II clinical study in patients with predominantly and minimally classic Wet AMD.

"**CNV**" is choroidal neovascularization.

"**Dry AMD"** is dry age-related macular degeneration.

"**dsRNA**" is synthetic double stranded RNA.

"**HIF-1α**" is hypoxia-inducible factor 1 alpha.

"**ICAM**" is intracellular adhesion molecules.

"R.A.C.E.™ Trial — Phase II Clinical Trial for DME" is the RNAi Assessment of bevasiranib in Diabetic Macular Edema, or R.A.C.E.™.

"**RP**" is retinitis pigmentosa.

"**RPE**" is retinal pigment epithelial.

"**VEGF"** is a vascular endothelial growth factor which we are developing as an intravitreal injection for the treatment of Wet AMD.

"**Wet AMD"** is wet age-related macular degeneration.

Item 1A. Risk Factors.

An investment in our company involves a significant level of risk. Investors should carefully consider the risk factors described below together with the other information included in this Current Report on Form 8-K. If any of the risks described below occurs, or if other risks not identified below occur, our business, financial condition, and results of operations could be materially adversely affected.

We have a history of operating losses and we do not expect to become profitable in the near future.

We are a clinical-stage biopharmaceutical company with a limited operating history. Our Froptix and Acuity subsidiaries are not profitable and have incurred losses in each year since their inception. We do not anticipate that we will generate revenue from the sale of products for the foreseeable future. We have not yet submitted any products for approval by regulatory authorities and we do not currently have rights to any product candidates that have been approved for marketing in our territory. We continue to incur research and development and general and administrative expenses related to our operations. Our net loss for our Acuity subsidiary for the years ended December 31, 2006, 2005 and 2004 was $11,092,000, $10,100,000, and $5,382,000, respectively. Our net loss for our Froptix subsidiary for the period ended December 31, 2006 was $877,000. As of December 31, 2006, we had an accumulated deficit of $57,050,000. We expect to continue to incur losses for the foreseeable future, and we expect these losses to increase as we continue our research activities and conduct development of, and seek regulatory approvals for, our product candidates, and prepare for and begin to commercialize any approved products. If our product candidates fail in clinical trials or do not gain regulatory approval, or if our product candidates do not achieve market acceptance, we may never become profitable. Even if we achieve profitability in the future, we may not be able to sustain profitability in subsequent periods.

Our technologies are in an early stage of development and are unproven.

We are engaged in the research and development of pharmaceutical products to employ various technologies as therapies for ophthalmic diseases. The effectiveness of our technologies are not well-known in, or accepted generally by, the clinical medical community. There can be no assurance that we will be able to successfully employ our technologies as therapeutic solutions for any ophthalmic disease. Our failure to establish the efficacy of our technologies would have a material adverse effect on our business.

Our drug research and development activities may not result in commercially viable products.

Our product candidates are in various stages of development and are prone to the risks of failure inherent in drug development. We will need to complete significant additional clinical trials before we can demonstrate that our product candidates are safe and effective to the satisfaction of the FDA and other non-U.S. regulatory authorities. Clinical trials are expensive and uncertain processes that take years to complete. Failure can occur at any stage of the process, and successful early clinical trials do not ensure that later clinical trials will be successful. Product candidates in later-stage trials may fail to show desired efficacy and safety traits despite having progressed through initial clinical trials. A number of companies in the pharmaceutical industry have suffered significant setbacks in advanced clinical trials, even after obtaining promising results in earlier trials.

We are highly dependent on the success of our lead product candidate, bevasiranib, and we cannot give any assurance that it will receive regulatory approval or be successfully commercialized.

Bevasiranib has been studied in a Phase II clinical trial for the treatment of Wet AMD, and we plan to study bevasiranib in Phase III clinical trials. Our Phase III clinical trials may not be successful, and bevasiranib may never receive regulatory approval or be successfully commercialized. Our clinical development program for bevasiranib may not receive regulatory approval if we fail to demonstrate that it is safe and effective in clinical trials and consequently fail to obtain necessary approvals from the FDA, or similar non-U.S. regulatory agencies, or if we have inadequate financial or other resources to advance bevasiranib through the clinical trial process. Even if bevasiranib receives regulatory approval, we may not be successful in marketing it for a number of reasons, including the introduction by our competitors of more clinically-effective or cost-effective alternatives or failure in our sales and marketing efforts. Any failure to obtain approval of bevasiranib and successfully commercialize it would have a material and adverse impact on our business.

The results of previous clinical trials may not be predictive of future results, and our current and planned clinical trials may not satisfy the requirements of the FDA or other non-U.S. regulatory authorities.

Positive results from pre-clinical studies and early clinical trials should not be relied upon as evidence that later-stage or large-scale clinical trials will succeed. We will be required to demonstrate with substantial evidence through well-controlled clinical trials that our product candidates are safe and effective for use in a diverse population before we can seek regulatory approvals for their commercial sale. Success in early clinical trials does not mean that future clinical trials will be successful because product candidates in later-stage clinical trials may fail to demonstrate sufficient safety and efficacy to the satisfaction of the FDA and other non-U.S. regulatory authorities despite having progressed through initial clinical trials.

Further, our product candidates may not be approved even if they achieve their primary endpoints in Phase III clinical trials or registration trials. The FDA or other non-U.S. regulatory authorities may disagree with our trial design and our interpretation of data from pre-clinical studies and clinical trials. In addition, any of these regulatory authorities may change requirements for the approval of a product candidate even after reviewing and providing comment on a protocol for a pivotal Phase III clinical trial that has the potential to result in FDA approval. In addition, any of these regulatory authorities may also approve a product candidate for fewer or more limited indications than we request or may grant approval contingent on the performance of costly post-marketing clinical trials. In addition, the FDA or other non-U.S. regulatory authorities may not approve the labeling claims necessary or desirable for the successful commercialization of our product candidates.

We will require substantial additional funding, which may not be available to us on acceptable terms, or at all.

We are advancing multiple product candidates through clinical development. We will need to raise substantial additional capital to continue our clinical development and commercialization activities.

Our future funding requirements will depend on many factors, including but not limited to:

- our need to expand our research and development activities;
- the rate of progress and cost of our clinical trials;
- the costs associated with establishing a sales force and commercialization capabilities;

- the costs of acquiring, licensing or investing in businesses, products, product candidates and technologies;
- the costs and timing of seeking and obtaining FDA and other non-U.S. regulatory approvals;
- our ability to maintain, expand and defend the scope of our intellectual property portfolio;
- our need and ability to hire additional management and scientific and medical personnel;
- the effect of competing technological and market developments;
- our need to implement additional internal systems and infrastructure, including financial and reporting systems; and
- the economic and other terms and timing of our existing licensing arrangements and any collaboration, licensing or other arrangements into which we may enter in the future.

Until we can generate a sufficient amount of product revenue to finance our cash requirements, which we may never do, we expect to finance future cash needs primarily through public or private equity offerings, debt financings or strategic collaborations. We do not know whether additional funding will be available on acceptable terms, or at all. If we are not able to secure additional funding when needed, we may have to delay, reduce the scope of or eliminate one or more of our clinical trials or research and development programs.

If our competitors develop and market products that are more effective, safer or less expensive than our future product candidates, our commercial opportunities will be negatively impacted.

The life sciences industry is highly competitive, and we face significant competition from many pharmaceutical, biopharmaceutical and biotechnology companies that are researching and marketing products designed to address Wet AMD and other ophthalmic diseases. We are currently developing therapeutics that will compete with other drugs and therapies that currently exist or are being developed. Products we may develop in the future are also likely to face competition from other drugs and therapies. Many of our competitors have significantly greater financial, manufacturing, marketing and drug development resources than we do. Large pharmaceutical companies, in particular, have extensive experience in clinical testing and in obtaining regulatory approvals for drugs. These companies also have significantly greater research and marketing capabilities than we do. Some of the pharmaceutical companies we expect to compete with include Genentech, OSI Pharmaceuticals, Pfizer, Novartis, Alcon, Allergan and B&L. In addition, many universities and private and public research institutions may become active in ophthalmic disease research.

We believe that our ability to successfully compete will depend on, among other things:

- the results of our clinical trials;
- our ability to recruit and enroll patients for our clinical trials;
- the efficacy, safety and reliability of our product candidates;
- the speed at which we develop our product candidates;
- our ability to commercialize and market any of our product candidates that may receive regulatory approval;
- our ability to design and successfully execute appropriate clinical trials;
- the timing and scope of regulatory approvals;

- adequate levels of reimbursement under private and governmental health insurance plans, including Medicare;
- our ability to protect intellectual property rights related to our products;
- our ability to have our partners manufacture and sell commercial quantities of any approved products to the market; and
- acceptance of future product candidates by physicians and other health care providers.

If our competitors market products that are more effective, safer or less expensive than our future product candidates, if any, or that reach the market sooner than our future product candidates, if any, we may not achieve commercial success. In addition, the biopharmaceutical industry is characterized by rapid technological change. Because our research approach integrates many technologies, it may be difficult for us to stay abreast of the rapid changes in each technology. If we fail to stay at the forefront of technological change, we may be unable to compete effectively. Technological advances or products developed by our competitors may render our technologies or product candidates obsolete or less competitive.

Our drug development activities could be delayed or stopped.

We do not know whether our other planned clinical trials will be completed on schedule, or at all, and we cannot guarantee that our planned clinical trials will begin on time or at all. The commencement of our planned clinical trials could be substantially delayed or prevented by several factors, including:

- limited number of, and competition for, suitable patients with the particular types of ophthalmic disease required for enrollment in our clinical trials;
- limited number of, and competition for, suitable sites to conduct our clinical trials;
- delay or failure to obtain FDA approval or agreement to commence a clinical trial;
- delay or failure to obtain sufficient supplies of the product candidate for our clinical trials;
- requirements to provide the drugs required in our clinical trial protocols at no cost, which may require significant expenditures that we are unable or unwilling to make;
- delay or failure to reach agreement on acceptable clinical trial agreement terms or clinical trial protocols with prospective sites or investigators; and
- delay or failure to obtain institutional review board, or IRB, approval to conduct a clinical trial at a prospective site.

The completion of our clinical trials could also be substantially delayed or prevented by several factors, including:

- slower than expected rates of patient recruitment and enrollment;
- failure of patients to complete the clinical trial;
- unforeseen safety issues;
- lack of efficacy evidenced during clinical trials;
- termination of our clinical trials by one or more clinical trial sites;

- inability or unwillingness of patients or medical investigators to follow our clinical trial protocols; and
- inability to monitor patients adequately during or after treatment.

Our clinical trials may be suspended or terminated at any time by the FDA, other regulatory authorities, the IRB overseeing the clinical trial at issue, any of our clinical trial sites with respect to that site, or us. Any failure or significant delay in completing clinical trials for our product candidates could materially harm our financial results and the commercial prospects for our product candidates.

The regulatory approval process is expensive, time consuming and uncertain and may prevent us or our collaboration partners from obtaining approvals for the commercialization of some or all of our product candidates.

The research, testing, manufacturing, labeling, approval, selling, marketing and distribution of drug products are subject to extensive regulation by the FDA and other non-U.S. regulatory authorities, which regulations differ from country to country. We are not permitted to market our product candidates in the United States until we receive approval of an NDA from the FDA. We have not submitted an application for or received marketing approval for any of our product candidates. Obtaining approval of an NDA can be a lengthy, expensive and uncertain process. In addition, failure to comply with FDA, non-U.S. regulatory authorities or other applicable U.S. and non-U.S. regulatory requirements may, either before or after product approval, if any, subject our company to administrative or judicially imposed sanctions, including:

- restrictions on the products, manufacturers or manufacturing process;
- warning letters;
- civil and criminal penalties;
- injunctions;
- suspension or withdrawal of regulatory approvals;
- product seizures, detentions or import bans;
- voluntary or mandatory product recalls and publicity requirements;
- total or partial suspension of production;
- imposition of restrictions on operations, including costly new manufacturing requirements; and
- refusal to approve pending NDAs or supplements to approved NDAs.

Regulatory approval of an NDA or NDA supplement is not guaranteed, and the approval process is expensive and may take several years. The FDA also has substantial discretion in the drug approval process. Despite the time and expense exerted, failure can occur at any stage, and we could encounter problems that cause us to abandon clinical trials or to repeat or perform additional pre-clinical studies and clinical trials. The number of pre-clinical studies and clinical trials that will be required for FDA approval varies depending on the drug candidate, the disease or condition that the drug candidate is designed to address, and the regulations applicable to any particular drug candidate. The FDA can delay, limit or deny approval of a drug candidate for many reasons, including:

- a drug candidate may not be deemed safe or effective;
- FDA officials may not find the data from pre-clinical studies and clinical trials sufficient;

- the FDA might not approve our third-party manufacturer's processes or facilities; or
- the FDA may change its approval policies or adopt new regulations.

Failure to recruit and enroll patients for clinical trials may cause the development of our product candidates to be delayed.

We may encounter delays or rejections if we are unable to recruit and enroll enough patients to complete clinical trials. Patient enrollment depends on many factors, including the size of the patient population, the nature of the protocol, the proximity of patients to clinical sites and the eligibility criteria for the trial. We have experienced, and expect to experience in the future, delays in patient enrollment in our clinical trials. Any such delays in planned patient enrollment in the future may result in increased costs, which could harm our ability to develop products.

Even if we obtain regulatory approvals for our product candidates, the terms of approvals and ongoing regulation of our products may limit how we manufacture and market our product candidates, which could materially impair our ability to generate anticipated revenues.

Once regulatory approval has been granted, the approved product and its manufacturer are subject to continual review. Any approved product may only be promoted for its indicated uses. In addition, if the FDA and/or other non-U.S. regulatory authorities approve any of our product candidates, the labeling, packaging, adverse event reporting, storage, advertising and promotion for the product will be subject to extensive regulatory requirements. We and the manufacturers of our products are also required to comply with cGMP regulations, which include requirements relating to quality control and quality assurance as well as the corresponding maintenance of records and documentation. Further, regulatory agencies must approve these manufacturing facilities before they can be used to manufacture our products, and these facilities are subject to ongoing regulatory inspection. If we fail to comply with the regulatory requirements of the FDA and other non-U.S. regulatory authorities, or if previously unknown problems with our products, manufacturers or manufacturing processes are discovered, we could be subject to administrative or judicially imposed sanctions, including:

- restrictions on the products, manufacturers or manufacturing process;
- warning letters;
- civil or criminal penalties or fines;
- injunctions;
- product seizures, detentions or import bans;
- voluntary or mandatory product recalls and publicity requirements;
- suspension or withdrawal of regulatory approvals;
- total or partial suspension of production;
- imposition of restrictions on operations, including costly new manufacturing requirements; and
- refusal to approve pending NDAs or supplements to approved NDAs.

In addition, the FDA and other non-U.S. regulatory authorities may change their policies and additional regulations may be enacted that could prevent or delay regulatory approval of our product candidates. We cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative action, either in the United States or abroad. If we are not able to

maintain regulatory compliance, we would likely not be permitted to market our future product candidates and we may not achieve or sustain profitability.

Even if we receive regulatory approval to market our product candidates, the market may not be receptive to our products.

Even if our product candidates obtain regulatory approval, resulting products may not gain market acceptance among physicians, patients, health care payors and/or the medical community. We believe that the degree of market acceptance will depend on a number of factors, including:

- timing of market introduction of competitive products;
- safety and efficacy of our product;
- prevalence and severity of any side effects;
- potential advantages or disadvantages over alternative treatments;
- strength of marketing and distribution support;
- price of our future product candidates, both in absolute terms and relative to alternative treatments; and
- availability of coverage and reimbursement from government and other third-party payors.

If our future product candidates fail to achieve market acceptance, we may not be able to generate significant revenue or achieve or sustain profitability.

The coverage and reimbursement status of newly approved drugs is uncertain, and failure to obtain adequate coverage and adequate reimbursement could limit our ability to market any future product candidates we may develop and decrease our ability to generate revenue from any of our existing and future product candidates that may be approved.

There is significant uncertainty related to the third-party coverage and reimbursement of newly approved drugs. The commercial success of our existing and future product candidates in both domestic and international markets will depend in part on the availability of coverage and adequate reimbursement from third-party payors, including government payors, such as the Medicare and Medicaid programs, managed care organizations, and other third-party payors. Government and other third-party payors are increasingly attempting to contain health care costs by limiting both coverage and the level of reimbursement for new drugs and, as a result, they may not cover or provide adequate payment for our existing and future product candidates. These payors may conclude that our future product candidates are less safe, less effective or less cost-effective than existing or later introduced products, and third-party payors may not approve our future product candidates for coverage and reimbursement. The failure to obtain coverage and adequate reimbursement for our existing and future product candidates or health care cost containment initiatives that limit or restrict reimbursement for our existing and future product candidates may reduce any future product revenue.

If we fail to attract and retain key management and scientific personnel, we may be unable to successfully develop or commercialize our product candidates.

We will need to expand and effectively manage our managerial, operational, financial, development and other resources in order to successfully pursue our research, development and commercialization efforts for our existing and future product candidates. Our success depends on our

continued ability to attract, retain and motivate highly qualified management and pre-clinical and clinical personnel. The loss of the services of any of our senior management could delay or prevent the commercialization of our product candidates. We do not maintain "key man" insurance policies on the lives of these individuals or the lives of any of our other employees. We employ these individuals on an at-will basis and their employment can be terminated by us or them at any time, for any reason and with or without notice. We will need to hire additional personnel as we continue to expand our research and development activities and build a sales and marketing function.

We have scientific and clinical advisors who assist us in formulating our research, development and clinical strategies. These advisors are not our employees and may have commitments to, or consulting or advisory contracts with, other entities that may limit their availability to us. In addition, our advisors may have arrangements with other companies to assist those companies in developing products or technologies that may compete with ours.

We may not be able to attract or retain qualified management and scientific personnel in the future due to the intense competition for qualified personnel among biotechnology, pharmaceutical and other businesses. If we are not able to attract and retain the necessary personnel to accomplish our business objectives, we may experience constraints that will impede significantly the achievement of our research and development objectives, our ability to raise additional capital and our ability to implement our business strategy. In particular, if we lose any members of our senior management team, we may not be able to find suitable replacements in a timely fashion or at all and our business may be harmed as a result.

As we evolve from a company primarily involved in development to a company also involved in commercialization, we may encounter difficulties in managing our growth and expanding our operations successfully.

As we advance our product candidates through clinical trials, we will need to expand our development, regulatory, manufacturing, marketing and sales capabilities or contract with third parties to provide these capabilities for us. As our operations expand, we expect that we will need to manage additional relationships with such third parties, as well as additional collaborators and suppliers. Maintaining these relationships and managing our future growth will impose significant added responsibilities on members of our management. We must be able to: manage our development efforts effectively; manage our clinical trials effectively; hire, train and integrate additional management, development, administrative and sales and marketing personnel; improve our managerial, development, operational and finance systems; and expand our facilities, all of which may impose a strain on our administrative and operational infrastructure.

Furthermore, we may acquire additional businesses, products or product candidates that complement or augment our existing business. Integrating any newly acquired business or product could be expensive and time-consuming. We may not be able to integrate any acquired business or product successfully or operate any acquired business profitably. Our future financial performance will depend, in part, on our ability to manage any future growth effectively and our ability to integrate any acquired businesses. We may not be able to accomplish these tasks, and our failure to accomplish any of them could prevent us from successfully growing our company.

If we fail to acquire and develop other products or product candidates at all or on commercially reasonable terms, we may be unable to diversify or grow our business.

We intend to continue to rely on in-licensing as the source of our products and product candidates for development and commercialization. The success of this strategy depends upon our ability to identify,

select and acquire pharmaceutical product candidates. Proposing, negotiating and implementing an economically viable product acquisition or license is a lengthy and complex process. We compete for partnering arrangements and license agreements with pharmaceutical and biotechnology companies and academic research institutions. Our competitors may have stronger relationships with third parties with whom we are interested in collaborating and/or may have more established histories of developing and commercializing products. As a result, our competitors may have a competitive advantage in entering into partnering arrangements with such third parties. In addition, even if we find promising product candidates, and generate interest in a partnering or strategic arrangement to acquire such product candidates, we may not be able to acquire rights to additional product candidates or approved products on commercially reasonable terms that we find acceptable, or at all.

We expect that any product candidate to which we acquire rights will require additional development efforts prior to commercial sale, including extensive clinical testing and approval by the FDA and other non-U.S. regulatory authorities. All product candidates are subject to the risks of failure inherent in pharmaceutical product development, including the possibility that the product candidate will not be shown to be sufficiently safe and effective for approval by regulatory authorities. Even if the product candidates are approved, we cannot be sure that they would be capable of economically feasible production or commercial success.

We rely on third parties to manufacture and supply our product candidates.

We do not own or operate manufacturing facilities for clinical or commercial production of our product candidates. We have no experience in drug formulation or manufacturing, and we lack the resources and the capability to manufacture any of our product candidates on a clinical or commercial scale. We believe we currently have, or can access, sufficient supplies of bevasiranib to conduct and complete our planned Phase III clinical trials. If our manufacturing partners are unable to produce bevasiranib in the amounts that we require, we may not be able to establish a contract and obtain a sufficient alternative supply from another supplier on a timely basis and in the quantities we require. We expect to continue to depend on third-party contract manufacturers for the foreseeable future.

Our product candidates require precise, high quality manufacturing. Any of our contract manufacturers will be subject to ongoing periodic unannounced inspection by the FDA and other non-U.S. regulatory authorities to ensure strict compliance with current Good Manufacturing Practice, or cGMP, and other applicable government regulations and corresponding standards. If our contract manufacturers fail to achieve and maintain high manufacturing standards in compliance with cGMP regulations, we may experience manufacturing errors resulting in patient injury or death, product recalls or withdrawals, delays or interruptions of production or failures in product testing or delivery, delay or prevention of filing or approval of marketing applications for our products, cost overruns or other problems that could seriously harm our business.

Any performance failure on the part of our contract manufacturers could delay clinical development or regulatory approval of our product candidates or commercialization of our future product candidates, depriving us of potential product revenue and resulting in additional losses. In addition, our dependence on a third party for manufacturing may adversely affect our future profit margins. Our ability to replace an existing manufacturer may be difficult because the number of potential manufacturers is limited and the FDA must approve any replacement manufacturer before it can begin manufacturing our product candidates. Such approval would require new testing and compliance inspections. It may be difficult or impossible for us to identify and engage a replacement manufacturer on acceptable terms in a timely manner, or at all.

We currently have limited marketing staff and no sales or distribution organization. If we are unable to develop our sales and marketing and distribution capability on our own or through collaborations with marketing partners, we will not be successful in commercializing our product candidates.

We currently have limited marketing and no sales or distribution capabilities. If our product candidates are approved, we intend to establish our sales and marketing organization with technical expertise and supporting distribution capabilities to commercialize our product candidates, which will be expensive and time consuming. Any failure or delay in the development of our internal sales, marketing and distribution capabilities would adversely impact the commercialization of these products. With respect to our existing and future product candidates, we may choose to collaborate with third parties that have direct sales forces and established distribution systems, either to augment our own sales force and distribution systems or in lieu of our own sales force and distribution systems. To the extent that we enter into co-promotion or other licensing arrangements, our product revenue is likely to be lower than if we directly marketed or sold our products. In addition, any revenue we receive will depend in whole or in part upon the efforts of such third parties, which may not be successful and are generally not within our control. If we are unable to enter into such arrangements on acceptable terms or at all, we may not be able to successfully commercialize our existing and future product candidates. If we are not successful in commercializing our existing and future product candidates, either on our own or through collaborations with one or more third parties, our future product revenue will suffer and we may incur significant additional losses.

Independent clinical investigators and contract research organizations that we engage to conduct our clinical trials may not be diligent, careful or timely.

We will depend on independent clinical investigators to conduct our clinical trials. Contract research organizations may also assist us in the collection and analysis of data. These investigators and contract research organizations will not be our employees and we will not be able to control, other than by contract, the amount of resources, including time that they devote to products that we develop. If independent investigators fail to devote sufficient resources to the development of product candidates, or if their performance is substandard, it will delay the approval and commercialization of any products that we develop. Further, the FDA requires that we comply with standards, commonly referred to as good clinical practice, for conducting, recording and reporting clinical trials to assure that data and reported results are credible and accurate and that the rights, integrity and confidentiality of trial subjects are protected. If our independent clinical investigators and contract research organizations fail to comply with good clinical practice, the results of our clinical trials could be called into question and the clinical development of our product candidates could be delayed. Failure of clinical investigators or contract research organizations to meet their obligations to us or comply with good clinical practice procedures could adversely affect the clinical development of our product candidates and harm our business.

The success of our business may be dependent on the actions of our collaborative partners.

An element of our strategy may be to enter into collaborative arrangements with established multinational pharmaceutical companies which will finance or otherwise assist in the development, manufacture and marketing of products incorporating our technology. We anticipate deriving some revenues from research and development fees, license fees, milestone payments and royalties from collaborative partners. Our prospects, therefore, may depend to some extent upon our ability to attract and retain collaborative partners and to develop technologies and products that meet the requirements of prospective collaborative partners. In addition, our collaborative partners may have the right to abandon research projects and terminate applicable agreements, including funding obligations, prior to or upon the expiration of the agreed-upon research terms. There can be no assurance that we will be successful in

establishing collaborative arrangements on acceptable terms or at all, that collaborative partners will not terminate funding before completion of projects, that our collaborative arrangements will result in successful product commercialization or that we will derive any revenues from such arrangements. To the extent that we are not able to develop and maintain collaborative arrangements, we would need substantial additional capital to undertake research, development and commercialization activities on our own.

If we are unable to obtain and enforce patent protection for our products, our business could be materially harmed.

Our success depends, in part, on our ability to protect proprietary methods and technologies that we develop under the patent and other intellectual property laws of the United States and other countries, so that we can prevent others from unlawfully using our inventions and proprietary information. However, we may not hold proprietary rights to some patents required for us to commercialize our proposed products. Because certain U.S. patent applications are confidential until patents issue, such as applications filed prior to November 29, 2000, or applications filed after such date which will not be filed in foreign countries, third parties may have filed patent applications for technology covered by our pending patent applications without our being aware of those applications, and our patent applications may not have priority over those applications. For this and other reasons, we may be unable to secure desired patent rights, thereby losing desired exclusivity. If licenses are not available to us on acceptable terms, we will not be able to market the affected products or conduct the desired activities, unless we challenge the validity, enforceability or infringement of the third party patent or otherwise circumvent the third party patent.

Our strategy depends on our ability to rapidly identify and seek patent protection for our discoveries. In addition, we will rely on third-party collaborators to file patent applications relating to proprietary technology that we develop jointly during certain collaborations. The process of obtaining patent protection is expensive and time-consuming. If our present or future collaborators fail to file and prosecute all necessary and desirable patent applications at a reasonable cost and in a timely manner, our business will be adversely affected. Despite our efforts and the efforts of our collaborators to protect our proprietary rights, unauthorized parties may be able to obtain and use information that we regard as proprietary.

The issuance of a patent does not guarantee that it is valid or enforceable. Any patents we have obtained, or obtain in the future, may be challenged, invalidated, unenforceable or circumvented. Moreover, the United States Patent and Trademark Office (the “USPTO”) may commence interference proceedings involving our patents or patent applications. Any challenge to, finding of unenforceability or invalidation or circumvention of, our patents or patent applications would be costly, would require significant time and attention of our management and could have a material adverse effect on our business. In addition, court decisions may introduce uncertainty in the enforceability or scope of patents owned by biotechnology and pharmaceutical companies.

Our pending patent applications may not result in issued patents. The patent position of pharmaceutical or biotechnology companies, including ours, is generally uncertain and involves complex legal and factual considerations. The standards that the USPTO and its foreign counterparts use to grant patents are not always applied predictably or uniformly and can change. There is also no uniform, worldwide policy regarding the subject matter and scope of claims granted or allowable in pharmaceutical or biotechnology patents. Accordingly, we do not know the degree of future protection for our proprietary rights or the breadth of claims that will be allowed in any patents issued to us or to others. The legal systems of certain countries do not favor the aggressive enforcement of patents, and the laws of foreign countries may not protect our rights to the same extent as the laws of the United States. Therefore,

the enforceability or scope of our owned or licensed patents in the United States or in foreign countries cannot be predicted with certainty, and, as a result, any patents that we own or license may not provide sufficient protection against competitors. We may not be able to obtain or maintain patent protection for our pending patent applications, those we may file in the future, or those we may license from third parties, including the University of Pennsylvania, the University of Illinois, the University of Florida Research Foundation, Intradigm, and Pathogenics.

While we believe that our patent rights are enforceable, we cannot assure you that any patents that have issued, that may issue or that may be licensed to us will be enforceable or valid or will not expire prior to the commercialization of our product candidates, thus allowing others to more effectively compete with us. Therefore, any patents that we own or license may not adequately protect our product candidates or our future products.

If we are unable to protect the confidentiality of our proprietary information and know-how, the value of our technology and products could be adversely affected.

In addition to patent protection, we also rely on other proprietary rights, including protection of trade secrets, know-how and confidential and proprietary information. To maintain the confidentiality of trade secrets and proprietary information, we will seek to enter into confidentiality agreements with our employees, consultants and collaborators upon the commencement of their relationships with us. These agreements generally require that all confidential information developed by the individual or made known to the individual by us during the course of the individual's relationship with us be kept confidential and not disclosed to third parties. Our agreements with employees also generally provide that any inventions conceived by the individual in the course of rendering services to us shall be our exclusive property. However, we may not obtain these agreements in all circumstances, and individuals with whom we have these agreements may not comply with their terms. In the event of unauthorized use or disclosure of our trade secrets or proprietary information, these agreements, even if obtained, may not provide meaningful protection, particularly for our trade secrets or other confidential information. To the extent that our employees, consultants or contractors use technology or know-how owned by third parties in their work for us, disputes may arise between us and those third parties as to the rights in related inventions.

Adequate remedies may not exist in the event of unauthorized use or disclosure of our confidential information. The disclosure of our trade secrets would impair our competitive position and may materially harm our business, financial condition and results of operations.

We will rely heavily on licenses from third parties.

Many of the patents and patent applications in our patent portfolio are not owned by us, but are licensed from third parties. For example, we rely on technology licensed from the University of Pennsylvania, the University of Illinois, the University of Florida Research Foundation, Intradigm and Pathogenics. Such license agreements give us rights for the commercial exploitation of the patents resulting from the patent applications, subject to certain provisions of the license agreements. Failure to comply with these provisions could result in the loss of our rights under these license agreements. Our inability to rely on these patents and patent applications which are the basis of our technology would have a material adverse effect on our business.

We license patent rights to certain of our technology from third party owners. If such owners do not properly maintain or enforce the patents underlying such licenses, our competitive position and business prospects will be harmed.

We have obtained licenses from the University of Pennsylvania, the University of Illinois, the University of Florida Research Foundation, Intradigm and Pathogenics. that are necessary or useful for our business. In addition, we intend to enter into additional licenses of third party intellectual property in the future.

Our success will depend in part on the ability of our licensors to obtain, maintain and enforce patent protection for our licensed intellectual property and, in particular, those patents to which we have secured exclusive rights in our field. Our licensors may not successfully prosecute the patent applications which are licensed to us. Even if patents issue in respect of these patent applications, our licensors may fail to maintain these patents, may determine not to pursue litigation against other companies that are infringing these patents, or may pursue such litigation less aggressively than we would. Without protection for the intellectual property we have licensed, other companies might be able to offer substantially identical products for sale, which could adversely affect our competitive business position and harm our business prospects.

Some jurisdictions may require us to grant licenses to third parties. Such compulsory licenses could be extended to include some of our product candidates, which may limit our potential revenue opportunities.

Many countries, including certain countries in Europe, have compulsory licensing laws under which a patent owner may be compelled to grant licenses to third parties. In addition, most countries limit the enforceability of patents against government agencies or government contractors. In these countries, the patent owner may be limited to monetary relief and may be unable to enjoin infringement, which could materially diminish the value of the patent. Compulsory licensing of life-saving products is also becoming increasingly popular in developing countries, either through direct legislation or international initiatives. Such compulsory licenses could be extended to include some of our product candidates, which may limit our potential revenue opportunities.

Our commercial success depends significantly on our ability to operate without infringing the patents and other proprietary rights of third parties.

Other entities may have or obtain patents or proprietary rights that could limit our ability to manufacture, use, sell, offer for sale or import products or impair our competitive position. In addition, to the extent that a third party develops new technology that covers our products, we may be required to obtain licenses to that technology, which licenses may not be available or may not be available on commercially reasonable terms, if at all. If licenses are not available to us on acceptable terms, we will not be able to market the affected products or conduct the desired activities, unless we challenge the validity, enforceability or infringement of the third party patent or circumvent the third party patent, which would be costly and would require significant time and attention of our management. Third parties may have or obtain valid and enforceable patents or proprietary rights that could block us from developing products using our technology. Our failure to obtain a license to any technology that we require may materially harm our business, financial condition and results of operations.

Additionally, RNA interference is a relatively new scientific field that has generated many different patent applications from organizations and individuals seeking to obtain important patents in the field. These applications claim many different methods, compositions and processes relating to the discovery, development and commercialization of RNAi therapeutics. Because the field is so new, very

few of these patent applications have been fully processed by government patent offices around the world, and there is a great deal of uncertainty about which patents will issue, when, to whom, and with what claims. It is likely that there will be significant litigation and other proceedings, such as interference and opposition proceedings in various patent offices, relating to patent rights in the RNAi field. Others may attempt to invalidate our intellectual property rights. Even if our rights are not directly challenged, disputes among third parties could impact our intellectual property rights.

If we become involved in patent litigation or other proceedings related to a determination of rights, we could incur substantial costs and expenses, substantial liability for damages or be required to stop our product development and commercialization efforts.

Third parties may sue us for infringing their patent rights. Likewise, we may need to resort to litigation to enforce a patent issued or licensed to us or to determine the scope and validity of proprietary rights of others. In addition, a third party may claim that we have improperly obtained or used its confidential or proprietary information. Furthermore, in connection with our third-party license agreements, we generally have agreed to indemnify the licensor for costs incurred in connection with litigation relating to intellectual property rights. The cost to us of any litigation or other proceeding relating to intellectual property rights, even if resolved in our favor, could be substantial, and the litigation would divert our management's efforts. Some of our competitors may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. Uncertainties resulting from the initiation and continuation of any litigation could limit our ability to continue our operations.

If any parties successfully claim that our creation or use of proprietary technologies infringes upon their intellectual property rights, we might be forced to pay damages, potentially including treble damages, if we are found to have willfully infringed on such parties' patent rights. In addition to any damages we might have to pay, a court could require us to stop the infringing activity or obtain a license. Any license required under any patent may not be made available on commercially acceptable terms, if at all. In addition, such licenses are likely to be non-exclusive and, therefore, our competitors may have access to the same technology licensed to us. If we fail to obtain a required license and are unable to design around a patent, we may be unable to effectively market some of our technology and products, which could limit our ability to generate revenues or achieve profitability and possibly prevent us from generating revenue sufficient to sustain our operations.

The Medicare prescription drug coverage legislation and future legislative or regulatory reform of the health care system may affect our ability to sell our products profitably.

In the United States, there have been a number of legislative and regulatory proposals, at both the federal and state government levels, to change the healthcare system in ways that could affect our ability to sell our products profitably, if approved. For example, the Medicare Prescription Drug and Modernization Act of 2003 (referred to as the "MMA"), went into effect on January 1, 2006 and has changed the types of drugs covered by Medicare, and the methodology used to determine the price for such drugs. Our business could be harmed by the MMA, by the possible effect of this legislation on amounts that private payors will pay and by other healthcare reforms that may be enacted or adopted in the future.

We are unable to predict what additional legislation or regulation, if any, relating to the health care industry or third-party coverage and reimbursement may be enacted in the future or what effect such legislation or regulation would have on our business. Any cost containment measures or other health care system reforms that are adopted could have a material adverse effect on our ability to commercialize our existing and future product candidates successfully.

Failure to obtain regulatory approval outside the United States will prevent us from marketing our product candidates abroad.

We intend to market certain of our existing and future product candidates in non-U.S. markets. In order to market our existing and future product candidates in the European Union and many other non-U.S. jurisdictions, we must obtain separate regulatory approvals. We have had limited interactions with non-U.S. regulatory authorities, and the approval procedures vary among countries and can involve additional testing, and the time required to obtain approval may differ from that required to obtain FDA approval. Approval by the FDA does not ensure approval by regulatory authorities in other countries, and approval by one or more non-U.S. regulatory authorities does not ensure approval by regulatory authorities in other countries or by the FDA. The non-U.S. regulatory approval process may include all of the risks associated with obtaining FDA approval. We may not obtain non-U.S. regulatory approvals on a timely basis, if at all. We may not be able to file for non-U.S. regulatory approvals and may not receive necessary approvals to commercialize our existing and future product candidates in any market.

Non-U.S. governments often impose strict price controls, which may adversely affect our future profitability.

We intend to seek approval to market certain of our existing and future product candidates in both the United States and in non-U.S. jurisdictions. If we obtain approval in one or more non-U.S. jurisdictions, we will be subject to rules and regulations in those jurisdictions relating to our product. In some countries, particularly in the European Union, prescription drug pricing is subject to governmental control. In these countries, pricing negotiations with governmental authorities can take considerable time after the receipt of marketing approval for a drug candidate. To obtain reimbursement or pricing approval in some countries, we may be required to conduct a clinical trial that compares the cost-effectiveness of our existing and future product candidates to other available therapies. If reimbursement of our future product candidates is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, we may be unable to achieve or sustain profitability.

Our business may become subject to economic, political, regulatory and other risks associated with international operations.

Our business is subject to risks associated with conducting business internationally, in part due to a number of our suppliers being located outside the United States. Accordingly, our future results could be harmed by a variety of factors, including:

- difficulties in compliance with non-U.S. laws and regulations;
- changes in non-U.S. regulations and customs;
- changes in non-U.S. currency exchange rates and currency controls;
- changes in a specific country's or region's political or economic environment;
- trade protection measures, import or export licensing requirements or other restrictive actions by U.S. or non-U.S. governments;
- negative consequences from changes in tax laws; and
- difficulties associated with staffing and managing foreign operations, including differing labor relations.

The market price of our common stock may fluctuate significantly.

The market price of our common stock may fluctuate significantly in response to numerous factors, some of which are beyond our control, such as:

- the announcement of new products or product enhancements by us or our competitors;
- developments concerning intellectual property rights and regulatory approvals;
- variations in our and our competitors' results of operations;
- changes in earnings estimates or recommendations by securities analysts, if our common stock is covered by analysts;
- developments in the biotechnology industry;
- the results of product liability or intellectual property lawsuits;
- future issuances of common stock or other securities;
- the addition or departure of key personnel;
- announcements by us or our competitors of acquisitions, investments or strategic alliances; and
- general market conditions and other factors, including factors unrelated to our operating performance.

Further, the stock market in general, and the market for biotechnology companies in particular, has recently experienced extreme price and volume fluctuations. Continued market fluctuations could result in extreme volatility in the price of our common stock, which could cause a decline in the value of our common stock. Price volatility of our common stock might be worse if the trading volume of our common stock is low.

Some or all of the "restricted" shares of our common stock issued to former stockholders of Froptix and Acuity in connection with the Mergers or held by other of our stockholders may be offered from time to time in the open market pursuant to an effective registration statement or Rule 144, and these sales may have a depressive effect on the market for our common stock.

Trading of our common stock is limited and trading restrictions imposed on us by applicable regulations and by lockup agreements we have entered into with our principal shareholders may further reduce our trading, making it difficult for our stockholders to sell their shares.

Trading of our common stock is currently conducted on the National Association of Securities Dealers, Inc.'s, OTC Bulletin Board, or "OTC BB." The liquidity of our common stock is limited, not only in terms of the number of shares that can be bought and sold at a given price, but also as it may be adversely affected by delays in the timing of transactions and reduction in security analysts' and the media's coverage of us, if at all.

Approximately 68% of the outstanding shares of our common stock (including outstanding shares of our preferred stock on an as converted basis) are subject to lockup agreements which limit sales for a two-year period. These factors may result in lower prices for our common stock than might otherwise be obtained and could also result in a larger spread between the bid and ask prices for our common stock. In addition, without a large float, our common stock is less liquid than the stock of companies with broader public ownership and, as a result, the trading prices of our common stock may be more volatile. In the absence of an active public trading market, an investor may be unable to liquidate his investment in our

common stock. Trading of a relatively small volume of our common stock may have a greater impact on the trading price of our stock than would be the case if our public float were larger. We cannot predict the prices at which our common stock will trade in the future.

Because our common stock may be a "penny stock," it may be more difficult for investors to sell shares of our common stock, and the market price of our common stock may be adversely affected.

Our common stock may be a "penny stock" if, among other things, the stock price is below $5.00 per share, it is not listed on a national securities exchange or approved for quotation on the Nasdaq Stock Market or any other national stock exchange or it has not met certain net tangible asset or average revenue requirements. Broker-dealers who sell penny stocks must provide purchasers of these stocks with a standardized risk-disclosure document prepared by the Securities and Exchange Commission. This document provides information about penny stocks and the nature and level of risks involved in investing in the penny-stock market. A broker must also give a purchaser, orally or in writing, bid and offer quotations and information regarding broker and salesperson compensation, make a written determination that the penny stock is a suitable investment for the purchaser, and obtain the purchaser's written agreement to the purchase. Broker-dealers must also provide customers that hold penny stock in their accounts with such broker-dealer a monthly statement containing price and market information relating to the penny stock. If a penny stock is sold to an investor in violation of the penny stock rules, the investor may be able to cancel its purchase and get its money back.

If applicable, the penny stock rules may make it difficult for investors to sell their shares of our common stock. Because of the rules and restrictions applicable to a penny stock, there is less trading in penny stocks and the market price of our common stock may be adversely affected. Also, many brokers choose not to participate in penny stock transactions. Accordingly, investors may not always be able to resell their shares of our common stock publicly at times and prices that they feel are appropriate.

Directors, executive officers, principal stockholders and affiliated entities own a significant percentage of our capital stock, and they may make decisions that you do not consider to be in the best interests of our stockholders.

As of the closing of the Mergers, our directors, executive officers, principal stockholders and affiliated entities beneficially owned, in the aggregate, approximately 65% of our outstanding voting securities. As a result, if some or all of them acted together, they would have the ability to exert substantial influence over the election of our board of directors and the outcome of issues requiring approval by our stockholders. This concentration of ownership may also have the effect of delaying or preventing a change in control of our company that may be favored by other stockholders. This could prevent transactions in which stockholders might otherwise recover a premium for their shares over current market prices.

Compliance with changing regulations concerning corporate governance and public disclosure may result in additional expenses.

There have been changing laws, regulations and standards relating to corporate governance and public disclosure, including the Sarbanes-Oxley Act, new regulations promulgated by the Securities and Exchange Commission and rules promulgated by the American Stock Exchange, the other national securities exchanges and the NASDAQ. These new or changed laws, regulations and standards are subject to varying interpretations in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies, which could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. As a result, our efforts to comply with evolving laws, regulations and standards are likely to continue to result in increased general and administrative expenses and a diversion of management time and attention from revenue-generating activities to compliance activities. Our board members, Chief Executive Officer and Chief Accounting Officer could face an increased risk of personal liability in connection with the performance of their duties. As a result, we may have difficulty attracting and retaining qualified board members and executive officers, which could harm our business. If our efforts to comply with new or changed laws, regulations and standards differ from the activities intended by regulatory or governing bodies, we could be subject to liability under applicable laws or our reputation may be harmed.

Item 2. Financial Information.

The following selected financial data of eXegenics should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations for eXegenics" and the Company's financial statements and the notes to those statements and other financial information appearing elsewhere in this Report and in the Company's Form 10-K for the year ending December 31, 2006.

	Year Ended December 31,				
	2006	2005	2004	2003	2002
Statement of Operations Data					
Revenue	$ —	$ —	$ —	$ 13,000	$ 562,000
Research and development	—	—	—	154,000	3,948,000
General and administrative expenses	1,117,000	1,438,000	2,051,000	2,938,000	4,770,000
Expenses related to strategic redirection	—	—	—	653,000	864,000
Merger, tender offers and consent solicitation expenses	—	—	—	2,233,000	2,010,000
Operating loss	(1,117,000)	(1,438,000)	(2,051,000)	(5,965,000)	(11,030,000)
Gain on disposition	—	—	—	—	4,000
Gain on sale of investments (net)	—	1,064,000	—	—	—
Interest income	469,000	190,000	127,000	174,000	686,000
Interest expense	—	(2,000)	(2,000)	(2,000)	(18,000)
Loss before tax benefit	(648,000)	(186,000)	(1,926,000)	(5,793,000)	(10,358,000)
Tax benefit	—	—	—	—	—
Net Loss	(648,000)	(186,000)	(1,926,000)	(5,793,000)	(10,358,000)
Preferred stock dividend	(238,000)	(234,000)	(223,000)	(207,000)	(169,000)
Net loss attributable to common stockholders	$ (886,000)	$ (420,000)	$(2,149,000)	$(6,000,000)	$(10,527,000)
Basic and diluted loss per common share	$ (0.04)	$ (0.03)	$ (0.13)	$ (0.38)	$ (0.67)

	December 31,				
	2006	2005	2004	2003	2002
Balance Sheet Data					
Total assets	$8,752,000	$9,000,000	$10,071,000	$11,342,000	$17,515,000
Working capital	8,078,000	8,723,000	9,829,000	10,296,000	15,924,000
Stockholders' equity	$8,078,000	$8,723,000	$ 9,832,000	$10,304,000	$16,074,000

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS OF EXEGENICS

The following discussion should be read in conjunction with, and is qualified in its entirety by, the financial statements and the notes thereto included with this Current report and in the Company's Report on Form 10-K for the year ended December 31, 2006. This "Management's Discussion and Analysis of Financial Condition and Results of Operations of eXegenics" section of this Current Report contains certain forward-looking statements as that term is defined in the Private Securities Litigation Reform of 1995. Such statements are based on management's current expectations and are subject to a number of factors and uncertainties that could cause actual results to differ materially from those described in the forward-looking statements. When used herein, the words "anticipate," "believe," "estimate," "expect" and similar expressions as they relate to our management or us are intended to identify such forward-looking statements. Our actual results, performance or achievements could differ materially from those expressed in, or implied by, these forward-looking statements. Historical operating results are not necessarily indicative of the trends in operating results for any future period.

The discussion and analysis of our financial condition and results of operations are based upon our financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. On an on-going basis, we evaluate our estimates, including those related to investments, intangible assets, income taxes, contingencies and litigation. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

Overview

Immediately prior to the consummation of the Mergers, eXegenics had no business operations. eXegenics was formerly known as Cytoclonal Pharmaceutics, Inc. and was involved in the research, creation and development of drugs for the treatment and prevention of cancer and infectious diseases. Historically, eXegenics operated as a drug discovery company, exploiting new enabling technologies to advance and shorten the new drug development cycle. Commencing in 2003, eXegenics began terminating its research and related activities. Since then, all of our scientific staff and administrative positions have been eliminated and all of our research and development activities have been terminated. As such, eXegenics was a holding company with a portfolio of marketable securities and no operations.

Since the termination of operations, the board of directors of eXegenics and management have been focused on redeploying the remaining residual assets of eXegenics. The board established a committee — the Business Opportunities Search Committee — to study strategic direction and identify potential business opportunities. The objective of eXegenics was to redeploy its assets and actively pursue new business opportunities.

On February 9, 2007, eXegenics completed its sale of 19,440,491 shares of eXegenics common stock, constituting approximately 51% of the issued and outstanding shares of eXegenics capital stock, on a fully diluted basis, to a small group of investors led by The Frost Group, LLC, a private equity firm controlled by Dr. Phillip Frost, our chief executive officer and chairman, and Dr. Jane Hsiao and Steve Rubin, two of our directors. The stock sale was made pursuant to the terms of a previously announced stock purchase agreement dated August 14, 2006, as amended as of November 30, 2006. The investors

paid eXegenics an aggregate purchase price of $8,613,000 at the closing, which is subject to adjustment based on eXegenics stockholders' equity at the closing.

Critical Accounting Policies

We believe the following critical accounting policies affect management's more significant judgments and estimates used in the preparation of our financial statements.

We consider all non-restrictive, highly liquid short-term investments purchased with an original maturity of three months or less to be cash equivalents. Investments consist of equity securities and are classified as available for sale and reported at their fair values. The realized gains and losses from these investments are reported in current earnings. Unrealized gains and losses from these securities are reported as a separate component of stockholders' equity and excluded from current earnings.

In May 2005, the Financial Accounting Standards Board (FASB) issued Statement of Financial Statement Accounting Standards No. 154, "Accounting Changes and Error Corrections-a replacement of APB Opinion No. 20 and FASB Statement No. 3" ("SFAS 154"). This Statement replaces APB Opinion No. 20, "Accounting Changes," and FASB Statement No. 3, "Reporting Accounting Changes in Interim Financial Statements." SFAS 154 requires retrospective application to prior periods' financial statements for changes in accounting principle, unless it is impractical to determine either the period-specific effects or the cumulative effect of the change. SFAS 154 also requires that a change in depreciation, amortization, or depletion method for long, non-financial assets be accounted for as a change in accounting estimate effected by a change in accounting principle. SFAS 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. Adoption of the provisions of SFAS 154 did not have a material effect on our financial condition.

In July 2006, the FASB issued FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes — an interpretation of FASB Statement No. 109" (FIN 48), which clarifies the accounting and disclosure for uncertainty in tax positions, as defined. FIN 48 seeks to reduce the diversity in practice associated with certain aspects of the recognition and measurement related to accounting for income taxes. We do not expect the interpretation will have a material impact on our financial condition.

In September 2006, the FASB issued statement No. 157, "Fair Value Measurements", (SFAS 157). SFAS 157 defines fair value, establishes a framework for measuring fair value in accordance with accounting principles generally accepted in the United States, and expands disclosures about fair value measurements. SFAS 157 is effective for fiscal years beginning after November 15, 2007, with earlier application encouraged. Any amounts recognized upon adoption as a cumulative effect adjustment will be recorded to the opening balance of retained earnings in the year of adoption. We have not yet determined the impact of this Statement on its financial condition.

We record a valuation allowance to reduce our deferred tax assets to the amount that is more likely than not to be realized. While we have considered future taxable income and ongoing prudent and feasible tax planning strategies in assessing the need for the valuation allowance, in the event we were to determine that we would be able to realize deferred tax assets in the future in excess of its net recorded amount, an adjustment to the net deferred tax asset would increase income in the period such determination was made. Likewise, should we determine that we would not be able to realize all or part of our net deferred tax asset in the future, an adjustment to the net deferred tax asset would be charged to income in the period such determination was made.

Results of Operations

Fiscal Year Ended December 31, 2006 Compared to Fiscal Year Ended December 31, 2005

Revenues

eXegenics recognized $0 from license, research and development revenues during fiscal 2006 and 2005. There was no license, research and development revenue as a result of eXegenics' exit from the drug discovery business and termination of related research and development activities. eXegenics had no operations in 2006.

Research and Development Expenses

eXegenics incurred research and development expenses of $0 during fiscal 2006 and fiscal 2005. This was a result of eXegenics' exit from the drug discovery business and termination of related research and development activities.

General and Administrative Expenses

General and administrative expenses for fiscal 2006 were $1,117,000 compared to $1,438,000 for fiscal 2005, a decrease of $321,000 or 22%. General and administrative expenses decreased primarily as a result of the reduction in payroll and related expenses. Significant variances in fiscal 2006, compared to fiscal 2005, were as follows: headcount related expenses, primarily salaries, travel and entertainment, health insurance, employee relations and office expenses declined by $288,000; investor and public relations expense declined by $5,000; insurance, primarily directors and officers liability insurance expense declined by $78,000; audit fees declined by $49,000; leased equipment expenses declined by $46,000; board of director travel expenses declined by $4,000 and miscellaneous expenses declined $86,000. The decrease in general and administrative expenses was partially offset by the following: a $180,000 increase in legal expenses (primarily attributable to the increase in the reserve for on ongoing litigation with Dr. Labidi), an increase in professional consulting fees of $25,000 and a $30,000 increase in board of director compensation.

Merger, Tender Offers and Consent Solicitation Expenses

In 2006 and 2005, eXegenics incurred no expenses related to failed merger, tender offers and consent solicitation activities. In 2006, in anticipation of the transactions completed by the Stock Purchase Agreement previously discussed, eXegenics incurred approximately $56,000 in legal, accounting and other related costs.

Expenses Related to Terminating the Drug Discovery Operations

As a result of eXegenics' decision to terminate its drug discovery operations, in fiscal 2006 and 2005 we incurred no costs associated with expenses from terminated operations. No expenses were recognized in 2006 or 2005 for eXegenics' strategic redirection.

Interest Income

Interest income for fiscal 2006 was $469,000 as compared to $190,000 for fiscal 2005, an increase of $279,000 or 68%. The increase in interest income was due to higher interest rates.

Other Income and Expenses

Other income and expenses was $0 during fiscal 2006 and a profit of $1,062,000 during fiscal 2005. The decrease was due to the appreciation and sale, by eXegenics of Javelin Pharmaceuticals, Inc. common stock in 2005.

Net Loss

eXegenics incurred net losses of $648,000 during fiscal 2006 and $186,000 during fiscal 2005. The increase in net loss of $462,000 or 60% is a result of the aforementioned sale of investments in 2005. Net loss per common share for fiscal 2006 was $0.04 and for fiscal 2005 was $0.03.

Fiscal Year Ended December 31, 2005 Compared to Fiscal Year Ended December 31, 2004

Revenues

eXegenics recognized $0 from license, research and development revenues during fiscal 2005 and 2004. There was no license, research and development revenue as a result of eXegenics' exit from the drug discovery business and termination of related research and development activities. There were no operations in 2005.

Research and Development Expenses

eXegenics incurred research and development expenses of $0 during fiscal 2005 and fiscal 2004. This was a result of eXegenics exit from the drug discovery business and termination of related research and development activities.

General and Administrative Expenses

General and administrative expenses for fiscal 2005 were $1,438,000 compared to $2,051,000 for fiscal 2004, a decrease of $613,000 or 42%. General and administrative expenses decreased primarily as a result of the termination of drug discovery operations. Significant variances in fiscal 2005, compared to fiscal 2004, were as follows: professional consulting fees declined by $60,000; headcount related expenses, primarily salaries, travel and entertainment, health insurance, employee relations and office expenses declined by $210,000; investor and public relations expense declined by $44,000; insurance, primarily directors and officers liability insurance expense declined by $435,000, primarily as a result of a change in insurance carriers; tax expense, mainly franchise tax, declined by $49,000; legal fees declined by $61,000; leased equipment declined by $60,000; board of directors fees and travel expenses declined by $110,000; and audit fees declined by $35,000. The increase of $250,000 is for the reserve established in connection with the lawsuit with Dr. Labidi, which reserve reflects a reasonable estimate of eXegenics' obligations to pay under the judgment; and an increase of $201,000 for the allowance recorded against the subscriptions receivable reflects eXegenics' uncertainty as to its collectability.

Merger, Tender Offers and Consent Solicitation Expenses

In 2005 and 2004, eXegenics recognized an aggregate of $0 in expenses related to merger, tender offers and consent solicitation activities.

Expenses Related to Terminating the Drug Discovery Operations

As a result of eXegenics' decision to terminate its drug discovery operations, in fiscal 2005 and 2004 eXegenics incurred $0 and $5,000, respectively, in costs associated with expenses from terminated operations. Cash disbursements made during fiscal 2004 against a previously established restructuring reserve included $90,000 for severance payments, $87,000 for terminated operating lease obligations, and $16,000 for equipment and facilities relocation. No expenses were recognized in 2005 and 2004 for eXegenics' strategic redirection.

Interest Income

Interest income for fiscal 2005 was $190,000 as compared to $127,000 for fiscal 2004, an increase of $63,000 or 50%. The increase in interest income was due to higher interest rates and increased investable balances resulting from the appreciation in value and ultimate sale of Javelin Pharmaceuticals, Inc. common stock.

Other Income and Expenses

Other income and expenses was a profit of $1,062,000 during fiscal year 2005 and $2,000 during fiscal year 2004. The increase was due to the appreciation and sale by eXegenics of Javelin Pharmaceuticals, Inc. common stock.

Net Loss

eXegenics incurred net losses of $186,000 during fiscal 2005 and $1,926,000 during fiscal 2004. The decrease in net loss of $1,740,000 or 90% is a result of the aforementioned sale of investments. Net loss per common share for fiscal 2005 was $0.03 and for fiscal 2004 was $0.13.

Liquidity and Capital Resources

At December 31, 2006 eXegenics had cash, cash equivalents and investments of approximately $8,596,000. During 2006, eXegenics used approximately $305,000 to fund its operating activities. Restricted cash was pledged as collateral in support of leases of laboratory equipment. In connection with the termination of eXegenics drug discovery research programs, eXegenics repurchased equipment subject to a capital lease agreement. However, in 2003, when eXegenics was in the process of exiting from the drug discovery business, it was not able to terminate its contractual obligations; it was not able to terminate its lease obligations until August 2005. In August 2005, in conjunction with the return of remaining lease obligations, the lessor of this equipment released $175,000 of restricted cash that was pledged as collateral. In addition, in 2005 eXegenics received proceeds of approximately $1,064,000 from the sale of shares of Javelin Pharmaceuticals, Inc common stock. The impact of maintaining its lease obligations through August 2005, was $46,000 in 2005 and $106,000 in 2004.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS OF FROPTIX AND ACUITY

You should read the following discussion and analysis of the financial condition and results of operations of the Froptix and Acuity subsidiaries of the Company, which now represent our ongoing business operations, together with the financial statements and the related notes appearing at the end of this report. Some of the information contained in this discussion and analysis or set forth elsewhere in this report, including information with respect to our plans and related financing, includes forward-looking statements that involve risks and uncertainties. You should read the "Risk Factors" section of this report for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

The discussion and analysis of our financial condition and results of operations are based on our financial statements, which we have prepared in accordance with U.S. generally accepted accounting principles. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported revenues and expenses during the reporting periods. On an ongoing basis, we evaluate such estimates and judgments, including those described in greater detail below. We base our estimates on historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

The following discussion and analysis excludes the impact of eXegenics' financial condition and results of operations prior to the Mergers because they were not material for any of the periods presented. Specifically, for the years ended December 31, 2006, 2005 and 2004, eXegenics had no revenue, expenses consisting solely of general and administrative expenses (i.e., legal, accounting and other professional fees) in the amount of $1,117,000, $1,438,000 and $2,051,000, respectively, and other income (i.e., amounts earned from investing available cash in a money market account) in the amount of $469,000, $1,252,000 and $125,000, respectively.

eXegenics' balance sheet as of December 31, 2006 consisted solely of total current assets equal to $8,752,000 (which consisted of cash and cash equivalents, prepaid expenses and other current assets) and total liabilities equal to $674,000. During these periods, eXegenics had no sources of cash and its sole use of cash was payment of the aforementioned professional fees and other costs associated with complying with eXegenics' reporting obligations under the rules and regulations promulgated by the SEC and consummating the Mergers with Froptix and Acuity. A discussion of eXegenics financial condition prior to the Mergers is included above in "Management's Discussion and Analysis of Financial Condition and Results of Operations of eXegenics."

Overview

We are a clinical-stage biopharmaceutical company focused on the development of innovative therapies for the treatment and prevention of ophthalmic disease. We have concentrated our resources to address ophthalmic disease in large and growing markets by employing a powerful and rapidly progressing technology, known as RNA Interference (RNAi), to develop its lead product candidate, bevasiranib sodium (referred to herein as bevasiranib and formerly known as Cand5). Bevasiranib is a small interfering RNA (siRNA) therapeutic targeting vascular endothelial growth factor (VEGF), which

we are developing as an intravitreal injection for the treatment of wet age-related macular degeneration (Wet AMD) and diabetic macular edema (DME).

Our Froptix and Acuity operating subsidiaries have not generated any revenues from operations, except for interest income. Since its inception in March 2003, Acuity has generated significant losses in connection with the research and development of its technology, including the clinical development of bevasiranib, and has accumulated a deficit equal to $32.7 million. Since its inception on June 23, 2006, Froptix has generated losses in connection with the research and development of its technology and has accumulated a deficit equal to $877,000. Since we do not generate revenue from any of our product candidates, we expect to continue to generate losses in connection with the clinical development of bevasiranib and the research and development activities relating to its technology and other drug candidates. As a result, we believe that our operating losses are likely to be substantial over the next several years. Such losses may fluctuate significantly from quarter to quarter and are expected to increase as we expand our research and development programs, including preclinical studies and clinical trials for our pharmaceutical product candidates under development. We will need to obtain additional funds to finish clinical testing of bevasiranib and to further develop our research and development programs.

Critical Accounting Estimates and Policies

While our significant accounting policies are more fully described in Note 3 to our financial statements appearing at the end of this Current Report on Form 8-K, we believe that the following accounting policies are the most critical for one to fully understand and evaluate our financial condition and results of operations.

Impairment of Long-Lived Assets

In accordance with Statement of Financial Accounting Standards (SFAS) No. 144, *Accounting for Impairment or Disposal of Long-Lived Assets*, long-lived assets, such as property and equipment, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, then an impairment charge is recognized by the amount by which the carrying amount of the asset exceeds the fair value of the asset. As of December 31, 2006, management believes that no revision of the remaining useful lives or write-down of long-lived assets is required.

Stock-Based Compensation

Before January 1, 2006, Acuity applied the intrinsic-value-based method of accounting prescribed by Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* (APB No. 25), and related interpretations including FASB Interpretation No. 44, (FIN 44), *Accounting for Certain Transactions Involving Stock Compensation, an Interpretation of APB Opinion No. 25*, to account for its fixed-plan stock options. Under the intrinsic-value-based method, compensation expense is recorded on the date of grant only if the current market price of the underlying stock exceeded the exercise price.

Effective January 1, 2006, Acuity, and, effective as of June 23, 2006 (the date of inception) Froptix, adopted SFAS No. 123(R), *Share-Based Payments* SFAS No. 123(R) replaces SFAS No. 123, *Accounting for Stock-Based Compensation*, and supersedes APB No. 25. SFAS No. 123(R) requires that all stock-based compensation be recognized as an expense in the financial statements and that such cost be measured at the fair value of the award. Acuity had adopted the prospective transition method provided for under SFAS No. 123(R) for private companies and, consequently, did not restate its results

from prior periods. Under this transition method, compensation cost recognized in 2006 associated with stock options includes (i) amortization related to all stock option awards granted/modified on or subsequent to January 1, 2006, based on the estimated grant date fair value using the Black-Scholes option-pricing model, and (ii) amortization of the intrinsic value recorded as deferred compensation for options granted prior to January 1, 2006 being accounted for under APB Opinion No. 25. Option awards granted prior to adoption of SFAS No. 123(R) continue to follow the provisions of APB Opinion No. 25 and FIN 44 until modified and or settled.

Prior to the adoption of SFAS No. 123(R), Acuity presented all tax benefits resulting from the exercise of stock options as operating cash flows in the statements of cash flows. SFAS No. 123(R) requires that cash flows resulting from tax deductions in excess of the cumulative compensation cost recognized for options exercised (excess tax benefits) be classified as financing cash flows. We have sufficient net operating loss carryforwards to generally eliminate cash payments for income taxes. Therefore, no cash has been retained as a result of excess tax benefits relating to share based payments made to directors and employees.

Results of Operation

Year Ended December 31, 2006 Compared to Year Ended December 31, 2005

Revenues

Neither Acuity nor Froptix had any revenues for the year ended December 31, 2006 or since inception.

Research and Development Expenses

Research and development expenses were $8,534,000 for the years ended December 31, 2006, an increase of $52,000, or 1% from $8,482,000 for the year ended December 31, 2005.

General and Administrative Expenses

General and administrative expenses were $3,073,000 for the year ended December 31, 2006, an increase of $1,384,000, or 82%, from $1,689,000 for the year ended December 31, 2005. The increase was principally due to stock-based compensation.

Financial Expenses and Income

Total net interest expense was $361,000 for the year ended December 31, 2006, compared to net interest income of $71,000 for the year ended December 31, 2005. The decrease resulted primarily from the lower balance of cash and cash equivalents held by Acuity during such periods and the incurrence by Acuity of interest expense in connection with the amortization of the warrant costs associated with the Acuity convertible notes.

Year Ended December 31, 2005 compared to Year Ended December 31, 2004

Revenues

Acuity had no revenues for the year ended December 31, 2005.

Research and Development Expenses

Research and development expenses were $8,482,000 for the year ended December 31, 2005, an increase of $4,879,000, or 135%, from $3,603,000 for the year ended December 31, 2004. The increase related to an increase in costs associated with the clinical trial expenses of Acuity during 2005.

General and Administrative Expenses

General and Administrative expenses were $1,689,000 for the year ended December 31, 2005, an increase of $349,000, or 26%, from $1,340,000 for the year ended December 31, 2004.

Financial Expenses and Income

Total net interest income was $71,000 for the year ended December 31, 2005, compared to net interest expense of $439,000 for the year ended December 31, 2004. The decrease resulted primarily from the higher balance of cash and cash equivalents held by Acuity during 2005.

Liquidity and Capital Resources

As a result of its significant research and development expenditures and the lack of any approved products to generate product sales revenue, Acuity has not been profitable and has generated operating losses since its inception. From inception through December 31, 2006, Acuity has funded its operations primarily with proceeds equal to $1.3 million from the sale of common stock, $1.5 million from the sale of Series A preferred stock, $16.4 million from the same of Series B preferred stock, $1,000,000 from the sale of convertible notes and $4,000,000 from the issuance of a term note. Froptix has also not been profitable and has generated operating losses since its inception. From inception through December 31, 2006, Froptix has funded its operations primarily with proceeds equal to $639,000 from the sale of common stock.

On March 27, 2007, in connection with the Mergers, the Company entered into a line of credit agreement with The Frost Group, LLC, a Florida limited liability company controlled by certain of our directors. The line of credit provides the Company with the right to draw up to $12,000,000 in available funds for working capital and to fund operations. The Company assumed the $4,000,000 previously drawn on the line of credit by Acuity and has an additional $8,000,000 available for borrowing. The Company pays interest of 10% on borrowing made under the line of credit.

Immediately following consummation of the Mergers, the Company has $16,250,000 in cash and cash equivalents and access to an additional $8,000,000 under the assumed line of credit.

Funding Requirements

We expect to incur losses from operations for the foreseeable future. We expect to incur increasing research and development expenses, including expenses related to the hiring of personnel and additional clinical trials. We expect that general and administrative expenses will also increase as we expand our finance and administrative staff, add infrastructure, and incur additional costs related to being an operating public company in the United States, including the costs of directors' and officers' insurance, investor relations programs, and increased professional fees. Our future capital requirements will depend on a number of factors, including the continued progress of its research and development of

product candidates, the timing and outcome of clinical trials and regulatory approvals, the costs involved in preparing, filing, prosecuting, maintaining, defending, and enforcing patent claims and other intellectual property rights, the acquisition of licenses to new products or compounds, the status of competitive products, the availability of financing, and our success in developing markets for our product candidates.

We do not anticipate that we will generate product revenues for at least the next several years. In the absence of additional funding, we expect continuing operating losses to result in increases in our cash used in operations over the next several years. To the extent that our capital resources are insufficient to meet our future capital requirements, we will need to finance our future cash needs through public or private equity offerings, debt financings, or corporate collaboration and licensing arrangements. We currently have no commitments for future external funding other than as described above. We may need to raise additional funds more quickly if one or more of our assumptions prove to be incorrect or if we choose to expand our product development efforts more rapidly than we presently anticipate, and we may decide to raise additional funds even before we need them if the conditions for raising capital are favorable.

We may seek to sell additional equity or debt securities or obtain a bank credit facility. The sale of additional equity or debt securities may result in dilution to our stockholders. The incurrence of indebtedness would result in increased fixed obligations and could also result in covenants that would restrict our operations. Additional equity or debt financing, grants, or corporate collaboration and licensing arrangements may not be available on acceptable terms, if at all. If adequate funds are not available, we may be required to delay, reduce the scope of or eliminate our research and development programs, reduce our planned commercialization efforts or obtain funds through arrangements with collaborators or others that may require us to relinquish rights to certain product candidates that we might otherwise seek to develop or commercialize independently.

Contractual Obligations

The following table summarizes our principal contractual obligations immediately upon consummation of the Mergers.

		Payments Due By Period			
Contractual Obligations	**Total**	**Less than 1 year**	**1-3 years**	**3-5 years**	**More than 5 years**
Long-term Debt Obligations (1)	$ 8,000,000	$ 1,667,000	$6,333,000	—	—
Capital Lease Obligations	—	—	—	—	—
Operating Lease Obligations (2)	356,000	59,000	210,000	87,000	—
Research License Agreement Obligations (3)	5,125,000	575,000	1,050,000	2,100,000	1,400,000
Purchase Obligations (4)	144,000	144,000	—	—	—
Total	**$13,625,000**	**$ 2,445,000**	**$7,593,000**	**$2,187,000**	**$ 1,400,000**

(1) Our long-term debt obligations referred to in the table above are amounts that are required to be paid under our term loan with Horizon Technology Funding Company LLC and our line of credit with The Frost Group, LLC.

(2) Includes remaining lease payments for lab equipment and Morristown, New Jersey office space.

(3) Includes minimum annual payments under Pathogenics and the University of Illinois licensing agreements and the University of Florida research agreement.

(4) Includes open purchase orders.

The preceding table does not include information with respect to the following contractual obligations because the amounts of the obligations are currently not determinable: contractual obligations in connection with clinical trials, which are payable on a per-patient basis, royalty obligations, which are payable based on the sales levels of some of our biopharmaceutical products and milestone payments which are payable upon the achievement of certain conditions.

Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements as of December 31, 2006 and 2005 and as of the consummation of the Mergers.

Quantitative and Qualitative Disclosures About Market Risk

In the normal course of doing business we are exposed to the risks associated with foreign currency exchange rates and changes in interest rates. We do not engage in trading market risk sensitive instruments or purchasing hedging instruments or "other than trading" instruments that are likely to expose us to significant market risk, whether interest rate, foreign currency exchange, commodity price or equity price risk.

Our exposure to market risk relates to our cash and investments and to our borrowings. We maintain an investment portfolio of money market funds and qualified purchaser funds. The securities in our investment portfolio are not leveraged, and are, due to their very short-term nature, subject to minimal interest rate risk. We currently do not hedge interest rate exposure. Because of the short-term maturities of our investments, we do not believe that a change in market rates would have a significant negative impact on the value of our investment portfolio.

The primary objective of our investment activities is to preserve principal while at the same time maximizing yields without significantly increasing risk. To achieve this objective, we invest our excess cash in debt instruments of the U.S. Government and its agencies, bank obligations, repurchase agreements and high-quality corporate issuers, and, by policy, restrict our exposure to any single corporate issuer by imposing concentration limits. To minimize the exposure due to adverse shifts in interest rates, we maintain investments at an average maturity of generally less than one month.

Item 3. Properties.

Our principal corporate office is now located at 4400 Biscayne Blvd, Suite 900, Miami, Florida. We rent this space from Frost Real Estate Holdings, LLC which is a company controlled by Dr. Phillip Frost, our chief executive officer and chairman.

We currently lease approximately 4,000 square feet of lab and office space in Philadelphia, Pennsylvania. This facility includes corporate offices and laboratory space and is rented on a month-to-month basis. Administrative services, preclinical research and development, project management, and pharmacology are all based at the Philadelphia, PA location. We also currently lease approximately 2,000 square feet of office space in Morristown, New Jersey. Clinical Research and Development are based at the Morristown, New Jersey location.

We have an office located at 1250 Pittsford-Victor Road, Building 200, Suite 280, Pittsford, New York 14534 that consists of approximately 500 square feet of office space. The Company sublets this office space from RFG Associates, a general partnership in which John A. Paganelli, our interim chief executive officer and secretary of the Company, is a partner. Monthly rent is $625 and the sublease may be terminated by either party upon thirty (30) days notice. We have provided notice of our intention to terminate this lease. eXegenics paid an aggregate of $10,000 in rent expenses in fiscal 2006.

Item 4. Security Ownership of Certain Beneficial Owners and Management.

The following tables set forth information, as of the closing date of the Mergers, regarding beneficial ownership of our common stock to the extent known to us by:

- Each person who is known by us to own beneficially more than 5% of our common stock;
- Each director;
- Our Chief Executive Officer and our three most highly compensated officers other than our Chief Executive Officer who served in such capacities in 2006 (collectively, the "Named Executive Officers"); and
- All of our directors and Named Executive Officers collectively.

Unless otherwise noted, we believe that all persons named in the table have sole voting and investment power with respect to all shares of our common stock beneficially owned by them.

For purposes of these tables, a person is deemed to be the beneficial owner of securities that can be acquired by such person within 60 days from the date hereof upon exercise of options, warrants and convertible securities. Each beneficial owner's percentage ownership is determined by assuming that options, warrants and convertible securities that are held by such person (but not those held by any other person) and that are exercisable within 60 days from March 30, 2007 have been exercised. The percentage of outstanding common shares have been calculated based upon 113,116,350 shares of common stock outstanding on March 30, 2007.

Security Ownership of Certain Beneficial Owners

Title of Class	Name and Address of Beneficial Owner	Number of Shares	Percentage of Outstanding Common Shares
Common Stock	The Frost Group, LLC (1)		
	4400 Biscayne Blvd.		
	Suite 1500		
	Miami, Florida 33137	20,286,704	17.93%
Common Stock	Frost Gamma Investments Trust (2)		
	4400 Biscayne Blvd.		
	Suite 1500		
	Miami, Florida 33137	66,047,216	58.39%
Common Stock	Johnson and Johnson Development		
	Corporation (3)		
	One Johnson & Johnson Plaza		
	New Brunswick, NJ 08933	16,125,775	14.26%
Common Stock	Psilos Group Partners II-S (4)		
	625 Avenue of the Americas		
	4th Floor		
	New York, NY 10011	11,284,283	9.98%

(1) The Frost Group, LLC holds 15,490,546 shares of the Company's common stock, warrants to purchase 6,487 shares of the Company's Series C Preferred Stock, convertible into 648,700

shares of the Company's common stock. The Frost Group, LLC also holds 4,147,458 warrants to purchase common stock.

(2) The Frost Gamma Investments Trust holds 36,518,923 shares of the Company's common stock and warrants to purchase 9,241,589 shares of common stock. The number of shares included above also includes 12,697,601 shares of Common Stock, warrants to purchase 3,399,671 shares of common stock and warrants to purchase 5,317 shares of the Company's Series C preferred stock, convertible into 531,700 shares of the Company's common stock, owned directly by The Frost Group, LLC. Frost Gamma Investments Trust is a principal member of The Frost Group, LLC. Frost Gamma Investments Trust disclaims beneficial ownership of these shares of common stock, except to the extent of any pecuniary interest therein.

(3) Johnson and Johnson Development Corporation holds 129,736 shares of the Company's Series C preferred stock, convertible into 12,973,600 shares of the Company's common stock. Johnson and Johnson Development Corporation also holds 2,949,141 warrants to purchase common stock and 203,034 options to purchase shares of common stock.

(4) Psilos Group Partners II-S holds 90,815 shares of the Company's Series C preferred stock, convertible into 9,081,500 shares of the Company's common stock. Psilos Group Partners II SBIC also holds 2,064,399 warrants to purchase common stock and 138,384 options to purchase shares of common stock.

Security Ownership of Directors and Named Executive Officers

Title of Class	Name of Beneficial Owner	Number of Outstanding Shares Beneficially Owned	Percentage of Outstanding Common Shares	Percentage of Common Shares Assuming Conversion of all Outstanding Series C Preferred Stock into Common Stock
Common Stock	Phillip Frost, M.D.	66,047,216(1)	58.39%	41.57%
Common Stock	Jane H. Hsiao, Ph.D., MBA	14,540,724(2)	12.85%	9.15%
Common Stock	David Eichler	11,284,283(3)	9.98%	7.10%
Common Stock	Steven D. Rubin	5,132,021(4)	4.54%	3.23%
Common Stock	Dale Pfost, Ph.D.	4,753,246(5)	4.20%	2.99%
Common Stock	Samuel Reich	1,373,539(6)	1.21%	0.86%
Common Stock	Michael Reich	649,145(7)	*	*
Common Stock	Denis O'Shaughnessy, Ph.D.,	194,066(8)	*	*
Common Stock	Robert Baron	186,339(9)	*	*
Common Stock	John A. Paganelli	155,000(10)	*	*
Common Stock	Adam Logal	16,216(11)	*	*
Common Stock	Richard A. Lerner, M.D.	—	—	—
Common Stock	Melvin L. Rubin, M.D.	—	—	—
Common Stock	All Executive Officers and Directors as a group (12 persons)	104,267,256	92.18%	65.63%

* less than 1%.

(1) The number of shares beneficially owned by Dr. Frost includes shares of common stock and warrants to purchase shares of common stock held by or beneficially owned by Frost Gamma Investments Trust, of which Frost Gamma Limited Partnership is the sole and exclusive beneficiary. Dr. Frost is one of two limited partners of Frost Gamma, L.P. The general partner of Frost Gamma, L.P. is Frost Gamma, Inc. and the sole shareholder of Frost Gamma, Inc. is Frost-Nevada Corporation. Dr. Frost is also the sole shareholder of Frost-Nevada Corporation. The Frost Gamma Investments Trust holds 36,518,923 shares of the Company's common stock and warrants to purchase 9,241,589 shares of common stock. The number of shares included above also includes 15,490,546 shares of common stock, warrants to purchase 4,147,458 shares of common stock and warrants to purchase 6,487 shares of the Company's Series C preferred stock, convertible into 648,700 shares of the Company's common stock, owned directly by The Frost Group, LLC. Frost

(2) Dr. Hsiao is a member of The Frost Group, LLC. Dr. Hsiao disclaims beneficial ownership of the securities held by The Frost Group, except to the extent of her pecuniary interest therein.

(3) Includes 11,145,899 shares and warrants and 138,384 options that are exercisable as of March 30, 2007 or will become exercisable on or before May 30, 2007 and which are held by Psilos Group Partners II-S, LP, an entity with which Mr. Eichler is affiliated. Mr. Eichler disclaims beneficial ownership of all such shares, warrants and options.

(4) Mr. Rubin is a member of The Frost Group, LLC. Mr. Rubin disclaims beneficial ownership of the securities held by The Frost Group, except to the extent of his pecuniary interest therein.

(5) Includes 1,543,961 shares which are the subject of stock options that are exercisable as of March 30, 2007 or will become exercisable on or before May 30, 2007.

(6) Includes 837,968 shares which are the subject of stock options that are exercisable as of March 30, 2007 or will become exercisable on or before May 30, 2007. Excludes 330,254 shares beneficially owned by Ilana K. Reich, of which Mr. Samuel J. Reich disclaims beneficial ownership.

(7) Includes 256,875 shares which are the subject of stock options that are exercisable as of March 30, 2007 or will become exercisable on or before May 30, 2007.

(8) Includes 194,066 shares which are the subject of stock options that are exercisable as of March 30, 2007 or will become exercisable on or before May 30, 2007.

(9) Includes 55,000 shares which are the subject of stock options that are exercisable as of March 30, 2007 or will become exercisable on or before May 30, 2007.

(10) Includes 55,000 shares which are the subject of stock options that are exercisable as of March 30, 2007 or will become exercisable on or before May 30, 2007.

(11) Includes 16,216 shares which are the subject of stock options that are exercisable as of March 30, 2007 or will become exercisable on or before May 30, 2007.

Item 5. Directors and Executive Officers.

The following table sets forth information concerning our executive officers and directors, including their ages, as of March 31, 2007:

Name	Age	Title
Phillip Frost, M.D.	70	Chief Executive Officer and Chairman of the Board
Dale Pfost, Ph.D.	49	President
Samuel J. Reich	32	Executive Vice President and Secretary
Denis O'Shaughnessy, Ph.D.	56	Senior Vice President of Clinical Development
Adam Logal	29	Executive Director of Finance, Chief Accounting Officer and Treasurer
John A. Paganelli	72	Director
David A. Eichler	36	Director
Michael Reich	63	Director
Jane H. Hsiao, Ph.D., MBA	59	Director
Steven D. Rubin	46	Director
Robert Baron	66	Director
Richard A. Lerner, M.D.	68	Director
Melvin L. Rubin, M.D.	75	Director

Phillip Frost, M.D. Dr. Frost became the CEO and Chairman of our board of directors after consummation of the Mergers on March 27, 2007. Dr. Phillip Frost was named the Vice Chairman of the Board of Teva Pharmaceutical Industries, Limited ("Teva") in January 2006 when Teva acquired IVAX Corporation ("IVAX"). Dr. Frost had served as Chairman of the board of directors and Chief Executive Officer of IVAX Corporation since 1987. Dr. Frost was named Chairman of the Board of Ladenburg Thalmann & Co., Inc., an American Stock Exchange-listed investment banking and securities brokerage firm, in July 2006 and has been a director of Ladenburg Thalmann since March 2005. He serves on the Board of Regents of the Smithsonian Institution, a member of the Board of Trustees of the University of Miami, a Trustee of each of the Scripps Research Institutes, the Miami Jewish Home for the Aged, and the Mount Sinai Medical Center and is Vice Chairman of the Board of Governors of the American Stock Exchange. Dr. Frost is also a director of Protalix BioTherapeutics, Inc., an American Stock Exchange-listed biotech pharmaceutical company, Continucare Corporation, an American Stock Exchange-listed provider of outpatient healthcare and home healthcare services, Northrop Grumman Corp., a New York Stock Exchange-listed global defense and aerospace company, Castle Brands, Inc., an American Stock Exchange-listed developer and marketer of alcoholic beverages, and Cellular Technical Services, Inc., a provider of products and services for the telecommunications industry.

Dale Pfost, Ph.D. Dr. Dale Pfost became our President after consummation of the Mergers on March 27, 2007. Previously, Dr. Pfost served as the President, CEO and Chairman of Acuity Pharmaceuticals and was one of the members of the founding management team from 2003 through March 2007. Dr. Pfost served as President, CEO and Chairman of Orchid BioSciences from 1996 through 2002 and was the founding CEO. From 1988 until 1996 Dr. Pfost served as President, CEO and Managing Director of Oxford GlycoSciences, where he was the founding CEO. Dr. Pfost was the founder and President of Infitek, Inc. from 1982 through 1984 until it was acquired by SmithKline Beckman where Dr. Pfost served in varying levels of increasing responsibilities through 1988.

Samuel J. Reich. Mr. Samuel Reich became our Executive Vice President after consummation of the Mergers on March 27, 2007. Prior to joining us, Mr. Reich served as Executive Vice President,

Research and Development and was a co-founder of Acuity. Mr. Reich co-founded Acuity in 2002 where he served in capacities of increasing responsibility from 2002 to March 2007. Prior to founding Acuity, Mr. Reich was a doctoral candidate at the University of Pennsylvania Medical School, where his doctoral research involved recognizing and pioneering the opportunity in RNAi therapeutics for treating ophthalmic diseases from 2001 until 2002.

John A. Paganelli. Mr. Paganelli served as our Interim Chief Executive Officer and Secretary from June 29, 2005 through the consummation of the Mergers, and Chairman of the eXegenics Board of Directors from December 2003 through the consummation of the Mergers. Mr. Paganelli served as President and Chief Executive Officer of Transamerica Life Insurance Company of New York from 1992 to 1997. Since 1987, Mr. Paganelli has been a partner in RFG Associates, a financial planning organization. Mr. Paganelli is the Managing Partner of Pharos Systems Partners, LLC, a company formed to raise capital to purchase the controlling interest in Pharos Systems International, a software development company. Mr. Paganelli is Chairman of the Board of Pharos Systems International. He was Vice President and Executive Vice President of PEG Capital Management, an investment advisory organization, from 1987 until 2000. From 1980 to January 2003, Mr. Paganelli was an officer and director-shareholder of Mike Barnard Chevrolet, Inc., an automobile dealership. Mr. Paganelli was on the Board of Directors of Mid Atlantic Medical Services, Inc. from 1999 until 2005. Mid Atlantic was listed on the New York Stock Exchange and through its wholly owned subsidiaries is in the business of selling various forms of health insurance. Mr. Paganelli was also on the Board of Directors of Mid Atlantic's subsidiary, MAMSI Life and Healthy Insurance Company. Mr. Paganelli holds an A.B. from Virginia Military Institute. In 2005 Mid Atlantic Medical Services, Inc. was acquired by UnitedHealth Group, Inc.

Denis O'Shaughnessy, Ph.D., Dr. Denis O'Shaughnessy became out Senior Vice President of Clinical Development upon consummation of the Mergers on March 27, 2007. Prior to joining us, Dr. O'Shaughnessy served as Senior Vice President of Clinical Development for Acuity from October 2006 to March 2007. From 2005 to October 2006, Dr. O'Shaughnessy was an independent clinical research consultant. From 2000 to 2005, Dr. O'Shaughnessy was a founding member of Eyetech Pharmaceuticals and served as Senior Vice President of Clinical Development. From 1990 to 2000 Dr. O'Shaughnessy was employed by Hoffmann-La Roche with increasing levels of responsibility, most recently as Director of Clinical Operations. From 1980 through 1990, Dr. O'Shaughnessy served at several pharmaceutical companies in various roles of increasing responsibility most recently as Head of Clinical Research for Celltech Ltd.

Adam Logal . Mr. Logal became out Director of Finance and Chief Accounting Officer after consummation of the Mergers on March 27, 2007. Prior to joining the Company, Mr. Logal served in various finance capacities at Nabi Biopharmaceuticals, most recently as Sr. Director, Accounting and Reporting. From March 2006 to June 2006, Mr. Logal served as Chief Financial Officer, Chief Accounting Officer and Treasurer and from November 2002 to June 2006 Mr. Logal served in various roles of increasing responsibility within the Finance Department. Prior to Nabi Biopharmaceuticals, Mr. Logal served from May 2001 to November 2002 as a tax accountant at Spherion Corporation, a recruiting and staffing company. From November 2000 to May 2001, Mr. Logal served as a staff accountant for Dunn & Co., CPAs PA, a public accounting firm.

Board of Directors

***Jane H. Hsiao, Ph.D., MBA*.** Dr. Hsiao has served as a director of the Company since February 2007. Dr. Hsiao served as the Vice Chairman-Technical Affairs of IVAX from 1995 to January 2006, when Teva acquired IVAX. Dr. Hsiao served as IVAX's Chief Technical Officer since 1996, and as Chairman, Chief Executive Officer and President of IVAX Animal Health, IVAX's veterinary products subsidiary, since 1998. From 1992 until 1995, Dr. Hsiao served as IVAX's Chief Regulatory Officer and

Assistant to the Chairman. Dr. Hsiao served as Chairman and President of DVM Pharmaceuticals from 1998 through 2006 and is also a director of Protalix BioTherapeutics, Inc., an American Stock Exchange-listed biotech pharmaceutical company, and Cellular Technical Services Company, Inc., a provider of products and services for the telecommunications industry.

***Steven D. Rubin*.** Mr. Rubin has served as a director of the Company since February 2007. Mr. Rubin served as the Senior Vice President, General Counsel and Secretary of IVAX from August 2001 until September 2006. Prior to joining IVAX, Mr. Rubin was Senior Vice President, General Counsel and Secretary with privately held Telergy, Inc., a provider of business telecommunications and diverse optical network solutions, from early 2000 to August 2001. In addition, he was with the Miami law firm of Stearns Weaver Miller Weissler Alhadeff & Sitterson from 1986 to 2000, in the Corporate and Securities Department. Mr. Rubin had been a shareholder of that firm since 1991 and a director since 1998. Mr. Rubin currently serves on the board of directors of Dreams, Inc., a vertically integrated licenses sports products company.

David A. Eichler. Mr. Eichler is a Managing Director of Psilos Group, a New York-based venture capital firm specializing in healthcare investments. Mr. Eichler joined Psilos in 1999 and focuses on investments in the specialty pharmaceutical, medical technology, healthcare services and healthcare IT sectors. Mr. Eichler has served on the board of directors of several Psilos portfolio companies, and has extensive experience as an advisor to senior management on M&A, financial restructuring and capital raising transactions. Mr. Eichler has been a director of Acuity since 2004 and also currently serves as Chairman of Caregiver Services, Inc., a leading provider of in-home care services. Prior to joining Psilos, Mr. Eichler was an investment banker at Wasserstein Perella & Co. where he was a member of the firm's Healthcare Group.

Michael Reich. Mr. Michael Reich is a proprietor of a commercial property development company. Previously, Mr. Reich was chief executive officer of Cosrich, Inc., a manufacturer of popularly priced cosmetics and toiletries, including numerous well known brands. Mr. Reich's area of expertise is in operations, finance and marketing. Prior to the Mergers, Mr. Reich had been a board member of Acuity since 2003.

Robert A. Baron. Mr. Baron has served on the board of directors of the company since 2003. Previously, Mr. Baron served as the President of Cash City, Inc. from 1999 to 2003. Cash City is a payday advance and check cashing business. From 1997 to 1999 Mr. Baron was the President of East Coast Operations for CSS/TSC, Inc., a distributor of blank t-shirts and fleece and accessories and a subsidiary of Tultex, Inc., a publicly held company. From 1986 to 1997, Mr. Baron was the chairman of T shirt City, Inc., a privately held company. From 1993 to 1997, Mr. Baron was a member of the board of directors of Suburban Bank Corp. When Mr. Baron was on Suburban's board, its common stock was traded on NASDAQ. Mr. Baron is also a director of Hemobiotech, Inc., a development stage biopharmaceutical company, and Andover Medical, Inc., a medical equipment distributor.

Richard A. Lerner, M.D. Dr. Lerner has been President of The Scripps Research Institute, a private, non-profit biomedical research organization, since 1986. Dr. Lerner is a member of numerous scientific associations, including the National Academy of Science and the Royal Swedish Academy of Sciences. Dr. Lerner serves as director of Kraft Foods, Inc. He is also on the board of directors for Xencor and Intra-Collular Therapies, two privately held biotechnology companies, and serves on the scientific advisory boards of Dyadic, a biotechnology company.

Melvin L. Rubin, M.D. Dr. Rubin is member of the faculty at the University of Florida Department of Ophthalmology where he holds the titles of Professor and Chairman Emeritus of Ophthalmology and Shaler Richardson Eminent Scholar Emeritus. He has been a member of the University of Florida Department of Ophthalmology faculty since 1963. He has served national ophthalmology on the board of directors and as president of the American Academy of Ophthalmology (the "AAO")

and later, president of the Foundation of the AAO. He has also been trustee and president of the Association for Research in Vision and Ophthalmology, and on the board of directors and chairman of the American Board of Ophthalmology.

Item 6. Executive Compensation.

Compensation Discussion and Analysis

The primary goals of our board of directors with respect to executive compensation will be to attract and retain talented and dedicated executives, to tie annual and long-term cash and stock incentives to achievement of specified performance objectives, and to create incentives which will result in stockholder value creation. To achieve these goals, we plan to form a compensation committee to recommend executive compensation packages to our board of directors that are generally based on a mix of salary, discretionary bonus and equity awards. Although we have not adopted any formal guidelines for allocating total compensation between equity compensation and cash compensation, we intend to implement and maintain compensation plans that tie a substantial portion of our executives' overall compensation to achievement of corporate goals.

Benchmarking of Cash and Equity Compensation

We have not retained a compensation consultant to review our policies and procedures with respect to executive compensation. We have, in the past, conducted an annual benchmark review of the aggregate level of our executive compensation, as well as the mix of elements used to compensate our executive officers. This review is based on a survey of executive compensation paid by peer companies in the pharmaceutical industry of similar size and stage of development. In addition, we have historically taken into account input from other independent members of our board of directors and publicly available data relating to the compensation practices and policies of other companies within and outside our industry.

We may retain the services of third-party executive compensation specialists from time to time in connection with the establishment of cash and equity compensation and related policies.

Elements of Compensation

We will evaluate individual executive performance with a goal of setting compensation at levels the board or any applicable committee thereof believes are comparable with executives in other companies of similar size and stage of development while taking into account our relative performance and our own strategic goals. The compensation received by our executive officers consists of the following elements:

Base Salary. Base salaries for our executives are established based on the scope of their responsibilities and individual experience, taking into account competitive market compensation paid by other companies for similar positions within the pharmaceutical industry. Our current senior vice president of clinical development was hired in November 2006 at an annual base salary of $265,000. Our current executive director of finance and chief accounting officer was hired in March 2007 at an annual base salary of $140,000. In connection with the consummation of the Mergers, we increased the base salary of our executive vice president to $210,000.

Discretionary Annual Bonus. In addition to base salaries, our compensation committee has the authority to award discretionary annual bonuses to our executive officers. The annual incentive bonuses

are intended to compensate officers for achieving corporate goals and value-creating milestones. Each executive officer is eligible for a discretionary annual bonus up to an amount equal to a specified percentage of such executive officer's salary.

Long-Term Incentive Program. We believe that long-term performance is achieved through an ownership culture that encourages such performance by our executive officers through the use of stock and stock-based awards. We believe that the use of equity and equity-based awards offers the best approach to achieving our compensation goals. We have not adopted formal stock ownership guidelines.

Our board of directors plans to adopt and implement a new stock incentive plan within the coming months.

Severance and Change-in-Control Benefits. Certain of our named executive officers are entitled to certain severance and change of control benefits, the terms of which are described below under "—Employment Agreements and Change in Control Arrangements." We believe these severance and change-in-control benefits are an essential element of our executive compensation package and assist us in recruiting and retaining talented individuals.

Restricted Stock Grants or Awards. We did not grant any restricted stock or restricted stock awards pursuant to our equity benefit plans to any of our executive officers in the year ended December 31, 2006. However, our compensation committee, in its discretion, may in the future elect to make such grants to our executive officers if it deems it advisable.

Other Compensation. We intend to continue to maintain the current benefits and perquisites for our executive officers; however, our compensation committee, in its discretion, may in the future revise, amend or add to the benefits and perquisites of any executive officer if it deems it advisable. The material terms of our employment agreements with our named executive officers are described below under "—Employment Agreements and Change in Control Arrangements."

Summary Compensation Table

The following table sets forth a summary for the fiscal year ended December 31, 2006 of the cash and non-cash compensation awarded, paid or accrued by the Company to our Named Executive Officers.

Name and Principal Position	Year	Salary($)	Bonus($)	Stock Award(s)($)	Option Award(s) ($)	All Other Compensation($)	Total($)
John A. Paganelli (1)							
Interim Chief Executive Officer	2006	25,000	—	—	810	75,000(2)	100,810
Phillip Frost, M.D. (3)							
Chief Executive Officer	2006	—	—	—	—	—	—
Dale Pfost, Ph.D.							
President (4)	2006	280,000	84,000	—	359,982	—	723,982
Adam Logal							
Executive Director of Finance and Chief Accounting Officer (5)	2006	—	—	—	—	—	—
Samuel J. Reich							
*Executive Vice President (*6)	2006	172,000	51,600	—	193,470	—	417,070
Denis O'Shaughnessy (7) (8)							
Senior Vice President of Clinical Development	2006	47,702	45,520	—	21,564	—	114,786

(1) Mr. Paganelli served as the Company's interim Chief Executive Officer from June 29, 2005 and he resigned from this position upon the consummation of the Mergers.

(2) Includes $75,000 of director fees for Mr. Paganelli.

(3) Dr. Frost became the Company's Chief Executive Officer upon consummation of the Mergers.

(4) Dr. Pfost served as the President and Chief Executive Officer of Acuity prior to the Mergers and was appointed to be the Company's President on March 29, 2007.

(5) Mr. Logal served as the Executive Director of Finance and Chief Accounting Officer of Acuity prior to the Mergers and was appointed to be the Company's Executive Director of Finance, Chief Accounting Officer and Treasurer on March 29, 2007.

(6) Samuel Reich served as the Executive Vice President of Acuity prior to the Mergers and was appointed to be the Company's Executive Vice President and Secretary on March 29, 2007.

(7) Dr. O'Shaughnessy served as the Senior Vice President of Clinical Development of Acuity prior to the Mergers and was appointed to be the Company's Senior Vice President of Clinical Development on March 29, 2007.

(8) Dr. O'Shaughnessy commenced employment with Acuity on November 13, 2006.

Outstanding Equity Awards at Fiscal Year-End

The following table sets forth information with respect to the Named Executive Officers concerning equity awards granted by the Company as of December 31, 2006.

	Option Awards				Stock Awards	
Name	Number of Securities Underlying Unexercised Options (#) Exercisable (1)	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price ($)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested ($)
Phillip Frost, M.D.	—	—	—	—	—	—
Dale Pfost, Ph.D.	77,841	233,524	0.05	01/01/2016	—	—
	90,815	220,550	0.05	11/01/2015	—	—
	608,138	689,223	0.04	02/15/2015	—	—
	225,740(2)	—	0.04	09/24/2014	—	—
	323,042	107,680	0.04	12/11/2013	—	—
John A. Paganelli	25,947		0.08	07/01/2016		
	25,947		0.08	04/01/2016		
	25,947		0.08	01/01/2016		
Adam Logal	—	—	—	—	—	—
Samuel J. Reich	71,920	215,766	0.05	01/01/2016	—	—
	83,907	203,778	0.05	11/01/2015	—	—
	214,063	242,605	0.04	02/15/2015	—	—
	131,360	102,169	0.04	09/21/2014	—	—
	194,603	64,867	0.04	12/11/2013	—	—
Denis O'Shaughnessy	32,433	745,980	0.06	10/23/2016		
	259,471(3)	—	0.06	10/23/2016		

(1) Except as noted below, all options vest in 48 equal monthly installments beginning on the date of grant.

(2) This option was fully vested on the grant date.

(3) This option was fully vested on the grant date.

Director Compensation

The following table sets forth information with respect to compensation of directors of the Company during fiscal year 2006.

Name	Fees Earned or Paid in Cash ($)	Stock Award ($)	Option Awards ($)	Non-Equity Incentive Plan Compensation ($)	Nonqualified Deferred Compensation Earnings ($)	All Other Compensation ($)	Total ($)
Robert Baron	50,000	—	810	—	—	—	50,810
David A, Eichler	—	—	13,815	—	—	—	13,815
Michael Reich (1)	—	—	46,960	—	—	—	46,960
Steven D. Rubin	—	—	—	—	—	—	—
Jane H. Hsiao, Ph.D.	—	—	—	—	—	—	—

(1) At December 31, 1006, Michael Reich had outstanding options to purchase 291,644 shares of our Common Stock.

We are currently considering compensation policies for directors of the Company. In the future, we may adopt a policy of paying independent directors an annual retainer and a fee for attendance at board and committee meetings. We anticipate reimbursing each director for reasonable travel expenses related to such director's attendance at board of directors and committee meetings.

Employment Agreements and Change in Control Arrangements

Dale R. Pfost, Ph.D. We are employing Dale R. Pfost as our President. Under his employment agreement, Dr. Pfost receives an annual base salary, subject to increases upon an annual review by our board of directors. Dr. Pfost's current salary is $280,000. The agreement provides for a discretionary annual bonus based on Dr. Pfost's performance and our business results as determined by our board of directors. Under the agreement, either we or Dr. Pfost may terminate his employment at any time, subject to continuation of salary payment and benefits for 12 months if we terminate Dr. Pfost's employment without cause, if Dr. Pfost terminates his employment for good reason or we give Dr. Pfost notice of our intention not to renew the term of the agreement prior to its expiration. The employment period will automatically be extended for one additional year unless either the Company or Dr. Pfost shall have given to the other party written notice of non-extension at least thirty (30) days prior to such anniversary. In addition, all unvested options to acquire shares of the Company's capital stock will vest immediately upon a change in control.

Samuel J. Reich. We are employing Samuel J. Reich as our Executive Vice President and Secretary. Under his employment agreement, Mr. Reich receives an annual base salary, subject to increases upon an annual review by our board of directors. Mr. Reich's current salary is $210,000. The agreement provides for a discretionary annual bonus based on Mr. Reich's performance and our business results as determined by our board of directors. Under the agreement, either we or Mr. Reich may terminate his employment at any time, subject to continuation of salary payment and benefits for 12 months if we terminate Mr. Reich's employment without cause, if Mr. Reich terminates his employment for good reason or if we give Mr. Reich notice of our intent not to renew the agreement after the initial year of his employment with the Company. The employment period will automatically be extended for one additional year unless either the Company or Mr. Reich shall have given to the other party written notice of non-extension at least thirty (30) days prior to such anniversary. We have agreed to grant Mr. Reich an option to purchase 500,000 shares of our common stock upon subject to the adoption of and approval by our stockholders of a new equity incentive plan.

Denis O'Shaughnessy, Ph.D. We are employing Dr. O'Shaughnessy as our Senior Vice President of Clinical Development. We have entered into a severance agreement with Dr. O'Shaughnessy which provides that if terminate his employment without cause during his first year of employment, we are obligated to pay him severance equal to three months salary following termination. The severance period increases by three months after each year of employment up to twelve months. We have also agreed to continue vesting of his options during the applicable severance period.

Adam Logal. We are employing Adam Logal as our Executive Director of Finance, Chief Accounting Officer and Treasurer. We have agreed to enter into a severance agreement with Mr. Logal to provide that: Mr. Logal will receive four months of paid salary and continued benefits if he is terminated without cause or he reasons for "good reason." Upon such termination, we have agreed to accelerate the vesting of all unvested stock options granted to Mr. Logal in connection with the commencement of his employment.

If we terminated our named executive officers without cause or they resigned for good reason on December 31, 2006, we would have to make the payments set forth in the following chart:

Name and Principal Position	Cash Payments upon Termination without Cause or Resignation for Good Reason	Vesting of Stock Options
John A. Paganelli (1)		
Interim Chief Executive Officer	None	None
Phillip Frost, M.D.		
Chief Executive Officer	None	None
Adam Logal		
Executive Director of Finance, Chief Accounting Officer and Treasurer	$ 46,667	389,207
Dale Pfost, Ph.D.		
President	$ 280,000	587,702
Samuel J. Reich		
Executive Vice President and Secretary	$ 210,000	376,394
Denis O'Shaughnessy		
Senior Vice President of Clinical Development	$ 88,333	48,650

Stock Option Plans

Immediately prior to the closing of the Mergers, Acuity had options to purchase 2,191,619 shares of common stock and options to purchase 141,000 shares of its Series B preferred stock. Immediately prior to the closing of the Mergers, Froptix had options to purchase 65 shares of common stock. Pursuant to the terms of Merger Agreement, we assumed all of the outstanding Froptix and Acuity options and, accordingly, we anticipate issuing 15,810,064 shares of our common stock and 7,317 shares of our Series C preferred stock, which will be convertible into 731,700 shares of our common stock, upon the exercise of such options.

Immediately prior to the closing of the Mergers, we had outstanding options to purchase 240,000 shares of common stock under our Amended and Restated 2000 Stock Option Plan.

New Incentive Plan to be Adopted

Our board of directors plans to adopt and implement a new stock incentive plan within the coming months.

Corporate Governance

The Company currently trades its shares on the National Association of Securities Dealers, Inc.'s, OTC Bulletin Board, or "OTCBB." Accordingly, we are not required to have an audit, compensation or nominating committee. However, we plan to submit a listing application to list our shares on the American Stock Exchange. We cannot assure you that we will be successful in listing our shares with the American Stock Exchange. We currently monitor developments in the area of corporate governance to ensure we will be in compliance with the standards and regulations required by the American Stock Exchange. A summary of our corporate governance measures follows:

Independent Directors

We believe a majority of the members of our board of directors are independent from management. When making determinations from time to time regarding independence, the board of directors will reference the listing standards adopted by the American Stock Exchange as well as the independence standards set forth in the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated by the SEC under that Act. In particular, our audit committee will periodically evaluate and report to the board of directors on the independence of each member of the Board. Our audit committee will analyze whether a director is independent by evaluating, among other factors, the following:

1. Whether the member of the board of directors has any material relationship with us, either directly, or as a partner, stockholder or officer of an organization that has a relationship with us;

2. Whether the member of the board of directors is a current employee of our company or our subsidiaries or was an employee of our company or our subsidiaries within three years preceding the date of determination;

3. Whether the member of the board of directors is, or in the three years preceding the date of determination has been, affiliated with or employed by (i) any of our present internal or external auditors or any affiliate of such auditor, or (ii) any of our former internal or external auditors or any affiliate of such auditor, which performed services for us within three years preceding the date of determination;

4. Whether the member of the board of directors is, or in the three years preceding the date of determination has been, part of an interlocking directorate, in which any of our executive officers serve on the compensation committee of another company that concurrently employs the member as an executive officer;

5. Whether the member of the board of directors receives any compensation from us, other than fees or compensation for service as a member of the board of directors and any committee of the board of directors and reimbursement for reasonable expenses incurred in connection with such service and for reasonable educational expenses associated with board of directors or committee membership matters;

6. Whether an immediate family member of the member of the board of directors is

currently or was an executive officer of ours within three years preceding the date of determination;

7. Whether an immediate family member of the member of the board of directors is, or in the three years preceding the date of determination has been, affiliated with or employed in a professional capacity by (i) any of our present internal or external auditors, or (ii) any of our former internal or external auditors which performed services for us within three years preceding the date of determination; and

8. Whether an immediate family member of the member of the board of directors is, or in the three years preceding the date of determination has been, part of an interlocking directorate, in which any of our executive officers serve on the compensation committee of another company that concurrently employs the immediate family member of the member of the board of directors as an executive officer.

The above list is not exhaustive and we anticipate that the audit committee will consider all other factors which could assist it in its determination that a director will have no material relationship with us that could compromise that director's independence.

Our non-management directors will hold formal meetings, separate from management, at least two times per year.

We have no formal policy regarding attendance by our directors at annual stockholders meetings, although we encourage such attendance and anticipate most of our directors will attend these meetings.

Steven D. Rubin has participated in discussions with our named executive officers regarding their employment agreements and the terms of their employment.

Personal Loans to Executive Officers and Directors

We currently prohibit extensions of credit in the form of a personal loan from us to our directors and executive officers.

Communications with the Board of Directors

Anyone who has a concern about our conduct, including accounting, internal accounting controls or audit matters, may communicate directly with the audit committee. These communications may be confidential or anonymous, and may be mailed, e-mailed, submitted in writing or reported by phone. All of these concerns will be forwarded to the appropriate directors for their review.

Item 7. Certain Relationships and Related Transactions, and Director Independence.

Jane H. Hsiao and Steven D. Rubin, two of our directors, and a trust controlled by Dr. Phillip Frost, our Chief Executive Officer and Chairman of the board of directors are members of The Frost Group, LLC, an entity which controls approximately 13.3% of our outstanding voting securities. Furthermore, the trust that is a member of the Frost Group owns 39% of our outstanding voting securities and 55.16% of our outstanding common stock. We are parties to a credit agreement with the Frost Group under which we have access to a line of credit with available borrowings of $12.0 million. To date, $4.0 million has been drawn under the line of credit by Acuity prior to the Mergers and the obligation to repay this amount was assumed by us as a result of the Mergers. We are obligated to pay interest at a 10%

annual rate on the borrowings on the line of credit. In connection with the entering into the line of credit, we have granted 4,000,000 warrants to purchase shares of common stock to The Frost Group, LLC.

Our principal corporate office is now located at 4400 Biscayne Blvd, Suite 900, Miami, Florida. We rent this space from Frost Real Estate Holdings, LLC, which is a company controlled by Dr. Phillip Frost, our chief executive officer and chairman.

Until a formal policy is established, the independent members of the our board of directors will review and approve all future transactions that would be required to be reported under Item 404(a) of Regulation S-K.

Registration Rights Agreement

Pursuant to the Merger Agreement, certain of our stockholders are entitled to certain rights with respect to the registration of the shares of our capital stock. Under the terms of these registration rights, if we propose to register any of our securities under the Securities Act, either for our own account or for the account of other security holders, such holders are entitled to notice of such registration and are entitled to include up to fifty percent (50%) of the shares of our common stock held by such stockholders in the registration.

Item 8. Legal Proceedings.

None.

Item 9. Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters.

The Registrant's common stock is traded on the OTCBB under the symbol "EXEG.OB." We issued 76,610,981 shares of our common stock pursuant to the Mergers and, accordingly, there are currently 113,116,350 shares of common stock outstanding. As of March 29, 2007, the closing price for our common stock was $3.57 per share. The quotations reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not represent actual transactions.

As of the close of business on March 29, 2007, there were approximately 210 holders of record of our common stock.

We have no plans to declare cash dividends on our common stock in the future and have not declared any thus far during fiscal year 2006 or during the last two completed fiscal years. There are restrictions that limit our ability to declare cash dividends on our common stock. We have agreed not to pay any cash dividends on our common stock pursuant to our loan agreement with Horizon Technology Funding Company LLC. We have also agreed not to declare any dividends on our common stock until we have paid the 2% cumulative dividend on our Series C preferred stock.

Item 10. Recent Sales of Unregistered Securities

On March 27, 2007, in connection with the Mergers, the Company entered into a $12,000,000 line of credit with The Frost Group, LLC, a Florida limited liability company controlled by certain of our directors. In partial consideration for the line of credit, the Company granted The Frost Group warrants to purchase 4,000,000 shares of our common stock.

In January 2007, Acuity issued warrants to purchase up to 125,000 shares of Series B preferred stock and warrants to purchase 15,625 shares of its common stock to The First Group in connection with the entry into a $7,000,000 line of credit. The warrants were assumed by us as a result of the Mergers and now represent warrants to purchase 6,487 shares of our Series C preferred stock and 147,458 shares of our common stock.

During the second quarter of fiscal year 2006, Froptix Corporation issued 905 shares of common stock to a group of private investors in exchange for $639,000 in the aggregate. These shares were converted into 61,775,002 shares of our common stock and warrants to purchase 15,632,969 shares of our common stock in the Mergers.

In September 2005, Acuity issued warrants to purchase up to 200,000 shares of Series B preferred stock and warrants to purchase 25,000 shares of its common stock to Horizon Technology Funding Company LLC in connection with a loan from Horizon Technology Funding Company LLC to Acuity of $4,000,000. The warrants were assumed by us as a result of the Mergers and now represent warrants to purchase 10,379 shares of our Series C preferred stock and 235,932 shares of our common stock.

Between September and December 2004, Acuity issued 4,408,839 shares of its Series B preferred stock and warrants to purchase 585,823 shares of common stock in a private placement to a group of investors for $8,203,500. These shares of Acuity Series B preferred stock were converted into 228,792 shares of our Series C preferred stock and warrants to purchase 2,057,288 shares of our Common stock in the Mergers. Furthermore, we assumed the Acuity warrants to purchase shares of Acuity common stock as a result of the Mergers and these warrants now represent warrants to purchase 3,242,788 shares of our common stock.

Between May and July 2005, Acuity issued 4,408,839 shares of its Series B preferred stock and warrants to purchase 585,823 shares of common stock in a private placement to a group of investors for $8,203,500. These shares of Acuity Series B preferred stock were converted into 228,792 shares of our Series C preferred stock and warrants to purchase 2,057,288 shares of our common stock in the Mergers. Furthermore, we assumed the Acuity warrants to purchase shares of Acuity common stock as a result of the Mergers and these warrants now represent warrants to purchase 3,242,788 shares of our common stock.

Between December 2003 and January 2004, Acuity issued 742,000 shares of its Series A preferred stock in a private placement to a group of investors for $1,484,000. These shares were converted into 1,925,284 shares of our common stock and warrants to purchase 350 222 shares of our common stock in the Mergers.

Between March and July 2003, Acuity issued 1,141,015 shares of its common stock in private placements to group of investors for $1,313,189. These shares were converted into 5,921,217 shares of our common stock and warrants to purchase 538,537 shares of our common stock in the Mergers.

In March 2003, Acuity issued 408,334 shares of common stock to the University of Pennsylvania in a private placement in connection with the entry into two license agreements with Acuity. These shares were converted into 2,119,021 shares of our common stock and warrants to purchase 192,726 shares of our common stock in the Mergers.

In March 2005, Acuity issued 250,000 shares of common stock to the Intradigm Corporation in a private placement in connection with the entry into a license and collaboration agreement with Acuity. These shares were converted into 1,297,358 shares of our common stock and warrants to purchase 117,995 shares of our common stock in the Mergers.

We believe that the securities sold in the foregoing transactions were exempt from registration under the Securities Act in reliance upon Section 4(2) or Regulation D of the Securities Act.

From March 2003 through December 2006, Acuity granted 317,528 shares of stock to its employees, consultants and directors. These shares were converted into 1,647,789 shares of our common stock and warrants to purchase 149,867 shares of our common stock in the Mergers.

From March 2003 through January 11, 2007, Acuity issued options to approximately 50 employees, consultants, and directors to purchase up to an aggregate total of 2,191,619 of its common shares, which we have assumed in connection with the Mergers and which now represent options to purchase 11,373,186 shares of our common stock. The exercise prices per share ranged from $0.20 to $2.87 prior to the Mergers and have been proportionately adjusted based on the adjustment to the number of shares issuable upon exercise of such options. In September 2004 Acuity issued an option to its president to purchase 141,000 shares of its Series B preferred stock which we have assumed in connection with the Mergers and which now represent options to purchase 7,317 shares of our Series C preferred stock which are convertible into 731,700 shares of our common stock. The exercise price per share was $1.65 prior to the Mergers and has been proportionately adjusted based on the adjustment to the number of shares issuable upon exercise of such options. As of January 11, 2007, options to purchase 29,250 shares of Acuity's common stock have been exercised by a consultant of Acuity.

In July 2006, Froptix issued options to one of its founders to purchase up to an aggregate total of 65 of its common shares which we have assumed in connection with the Mergers and which now represent options to purchase 4,436,878 shares of our common stock. The exercise price per share was $706 prior to the Mergers and has been proportionately adjusted based on the adjustment to the number of shares issuable upon exercise of such options.

No consideration was paid to Acuity or Froptix by any recipient of any of the foregoing options for the grant of such options. We believe that the securities sold in these transactions were exempt from registration under the Securities Act in reliance upon Rule 701 or Regulation D of the Securities Act.

ITEM 11. Description of Registrant's Securities.

Our authorized capital stock consists of 225,000,000 shares of common stock, par value $.01 per share, and 10,000,000 shares of preferred stock, par value $.01 per share.

Common Stock

Of the authorized common stock, 113,116,350 shares are currently outstanding and are held by approximately 210 record holders. Subject to the prior rights of the holders of any shares of preferred stock currently outstanding or which may be issued in the future, the holders of the common stock are entitled to receive dividends from our funds legally available therefor when, as and if declared by our board of directors, and are entitled to share ratably in all of our assets available for distribution to holders of common stock upon the liquidation, dissolution or winding-up of our affairs subject to the liquidation preference, if any, of any then outstanding shares of preferred stock. Holders of our common stock do not have any preemptive, subscription, redemption or conversion rights. Holders of our common stock are entitled to one vote per share on all matters which they are entitled to vote upon at meetings of stockholders or upon actions taken by written consent pursuant to Delaware corporate law. The holders of our common stock do not have cumulative voting rights, which means that the holders of a plurality of the outstanding shares can elect all of our directors. All of the shares of our common stock currently issued and outstanding are fully-paid and nonassessable. No dividends have been paid to holders of our common stock since our incorporation, and no cash dividends are anticipated to be declared or paid in the reasonably foreseeable future.

Preferred Stock

Our board of directors has the authority, without further action by the holders of the outstanding common stock, to issue preferred stock from time to time in one or more classes or series, to fix the number of shares constituting any class or series and the stated value thereof, if different from the par value, as to fix the terms of any such series or class, including dividend rights, dividend rates, conversion or exchange rights, voting rights, rights and terms of redemption (including sinking fund provisions), the redemption price and the liquidation preference of such class or series. We presently have two series of preferred stock outstanding, designated as Series A convertible preferred stock (the "Series A preferred stock") and Series C convertible preferred stock (the "Series C preferred stock"). We have no present plans to issue any other series or class of preferred stock. The designations, rights and preferences of the Series A preferred stock and the Series C Preferred Stock are set forth in the certificate of designations of Series A convertible preferred stock and the certificate of designations of Series C convertible preferred stock, each of which has been filed with the Secretary of State of the State of Delaware.

Series A Preferred Stock

Of the authorized preferred stock, 4,000,000 shares have been designated Series A preferred stock, 1,083,404 of which are currently issued and outstanding and held by 71 stockholders. Dividends are payable on the Series A preferred stock in the amount of $.25 per share, payable annually in arrears. At the option of our board of directors, dividends will be paid either (i) wholly or partially in cash or (ii) in newly issued shares of Series A preferred stock valued at $2.50 per share to the extent cash dividend is not paid.

Holders of Series A preferred stock have the right to convert their shares, at their option exercisable at any time, into shares of our common stock on a one-for-one basis subject to anti-dilution

adjustments. These anti-dilution adjustments are triggered in the event of any subdivision or combination of our outstanding common stock, any payment by us of a stock dividend to holders of our common stock or other occurrences specified in the certificate of designations relating to the Series A preferred stock. We may elect to convert the Series A preferred stock into common stock or a substantially equivalent preferred stock in the case of a merger or consolidation in which we do not survive, a sale of all or substantially all of our assets or a substantial reorganization of us.

Each share of Series A preferred stock is entitled to one vote on all matters on which the common stock has the right to vote. Holders of Series A preferred stock are also entitled to vote as a separate class on any proposed adverse change in the rights, preferences or privileges of the Series A preferred stock and any increase in the number of authorized shares of Series A preferred stock. In the event of any liquidation or winding up of the Company, the holders of the Series A preferred stock will be entitled to receive $2.50 per share plus any accrued and unpaid dividends before any distribution to the holders of the common stock and any other class of series of preferred stock ranking junior to it.

We may redeem the outstanding shares of Series A preferred stock for $2.50 per share (plus accrued and unpaid dividends), at any time.

Series B Junior Participating Preferred Stock

Of the authorized preferred stock, 30,000 shares have been designated Series B Junior Participating preferred stock, none of which are currently issued and outstanding.

Series C Preferred Stock

Of the authorized preferred stock, 500,000 shares have been designated Series C preferred stock, of which 457,589 are currently issued and outstanding and held by 30 stockholders. Cumulative dividends are payable on the Series C preferred stock in the amount of $1.54 per share when declared by the board of directors.

Holders of our Series C preferred stock have the right to convert their shares, at their option exercisable at any time, into shares of our common stock on a one hundred-for-one basis subject to anti-dilution adjustments. These anti-dilution adjustments are triggered in the event of any subdivision or combination of our outstanding common stock, any payment by us of a stock dividend to holders of our common stock or other occurrences specified in the certificate of designations relating to the Series C preferred stock.

The shares of Series C preferred stock will automatically convert into shares of common stock, on a one-hundred-for-one basis (subject to adjustment as noted above), if (a) our common stock trades above $3.83 per share on any of the specified exchanges for ten consecutive days, (b) we raise at least $30,000,000 in proceeds at a per share valuation of at least $1.92, or (c) at least 60% of the holders of the Series C preferred stock so elect.

Each share of Series C preferred stock is entitled to 100 votes on all matters on which the common stock has the right to vote. Holders of Series C preferred stock are also entitled to vote as a separate class on any proposed adverse change in the rights, preferences or privileges of the Series C preferred stock and any increase in the number of authorized shares of Series C preferred stock. In the event of any liquidation or winding up of the Company or any change of control transaction (including certain mergers and sales of stock or assets), the holders of our Series C preferred stock will be entitled to receive $77.00 per share plus any accrued and unpaid dividends before any distribution to the holders of the other classes of preferred stock or common stock. The Series C preferred stock will be entitled

hereafter (and after the payment of any other liquidation preference on any other class or series of preferred stock) to share in our remaining assets on a pro-rata basis with the holders of common stock and any other series or class of participating preferred stock.

Each holder of Series C preferred stock has a pre-emptive right to purchase a pro rata share of any equity securities offered for sale by us in a private placement transaction for a period of 18 months following the Mergers subject to customary exceptions set forth in the certificate of designations relating to the Series C preferred stock.

Anti-Takeover Effects of Certain Provisions of our Certificate of Incorporation, our By-Laws and Delaware Law

Delaware Statute.

We are subject to Section 203 of the Delaware General Corporation law, which prohibits a publicly held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person became an interested stockholder, unless:

- prior to such date, our board of directors approves either the business combination or the transaction that resulted in the stockholder's becoming an interested stockholder;
- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owns at least 85% of our outstanding voting stock, excluding shares held by directors, officers and certain employee stock plans; or
- on or after the consummation date, the business combination is approved by our board of directors and by the affirmative vote at an annual or special meeting of stockholders holding of at least two-thirds of our outstanding voting stock that is not owned by the interested stockholder.

For purposes of Section 203, a "business combination" includes, among other things, a merger, asset sale or other transaction resulting in a financial benefit to the interested stockholder, and an "interested stockholder" is generally a person who, together with affiliates and associates of such person:

- owns 15% or more of outstanding voting stock; or
- is an affiliate or associate of ours and was the owner of 15% or more of our outstanding voting stock at any time within the prior three years.

Certificate of Incorporation and Bylaw Provisions.

Our amended and restated certificate of incorporation and amended and restated bylaws include provisions that, among others, could have the effect of delaying, deferring, or discouraging potential acquisition proposals and could delay or prevent a change of control of us. The provisions in our certificate of incorporation and bylaws that may have such effect include:

- *Preferred Stock*. As noted above, our board of directors, without stockholder approval, has the authority under our certificate of incorporation to issue preferred stock with rights superior to the rights of the holders of common stock. As a result, we could issue preferred stock quickly and easily, which could adversely affect the rights of holders of

our common stock and could be issued with terms calculated to delay or prevent a change of control or make removal of management more difficult.

- *Election and Removal of Directors*. Directors may be removed by the affirmative vote of the holders of at least a majority of the voting power of all of the outstanding shares of capital stock of the corporation entitled to vote thereon, voting together as a single class.

- *Stockholder Meetings*. Under our certificate of incorporation and bylaws, special meetings of our stockholders may be called only by the vote of a majority of the entire board. Our stockholders may not call a special meeting of the stockholders.

- *Requirements for Advance Notification of Stockholder Nominations and Proposals.* Our bylaws establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of our board of directors or a committee thereof.

ITEM 12. Indemnification of Directors and Officers.

The Delaware General Corporation Law and certain provisions of our bylaws under certain circumstances provide for indemnification of our officers, directors and controlling persons against liabilities which they may incur in such capacities. A summary of the circumstances in which such indemnification is provided for is contained herein, but this description is qualified in its entirety by reference to our bylaws and to the statutory provisions.

In general, any officer, director, employee or agent may be indemnified against expenses, fines, settlements or judgments arising in connection with a legal proceeding to which such person is a party, if that person's actions were in good faith, were believed to be in our best interest, and were not unlawful. Unless such person is successful upon the merits in such an action, indemnification may be awarded only after a determination by independent decision of the board of directors, by legal counsel, or by a vote of the stockholders, that the applicable standard of conduct was met by the person to be indemnified.

The circumstances under which indemnification is granted in connection with an action brought on our behalf is generally the same as those set forth above; however, with respect to such actions, indemnification is granted only with respect to expenses actually incurred in connection with the defense or settlement of the action. In such actions, the person to be indemnified must have acted in good faith and in a manner believed to have been in our best interest, and have not been adjudged liable for negligence or misconduct.

Indemnification may also be granted pursuant to the terms of agreements which may be entered into in the future or pursuant to a vote of stockholders or directors. The statutory provision cited above also grants the power to us to purchase and maintain insurance which protects our officers and directors against any liabilities incurred in connection with their service in such a position, and such a policy may be obtained by us.

A stockholder's investment may be adversely affected to the extent we pay the costs of settlement and damage awards against directors and officers as required by these indemnification provisions. At present, there is no pending litigation or proceeding involving any of our directors, officers or employees regarding which indemnification by us is sought, nor are we aware of any threatened litigation that may result in claims for indemnification.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling us pursuant to the foregoing provisions, we have been informed that, in the opinion of the SEC, this indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Items 3.02. Unregistered Sales of Equity Securities.

The disclosure set forth in Item 2.01 to this Current Report is incorporated into this item by reference.

Item. 5.01. Changes in Control of Registrant.

As a result of the Mergers described in Item 2.01 to this Current Report on Form 8-K, including the Form 10 disclosures, The Frost Group, LLC which beneficially owned (as such term is defined in Rule 13d-3 of the Securities Exchange Act of 1934, as amended) 15,490,546 shares of common stock of

the Company, representing 41.27% of the then outstanding voting securities of the Company prior to the Mergers, together with its members, now beneficially own 77,265,548 shares of common stock, representing 48% of now outstanding voting securities of the Company.

The disclosure set forth in Item 2.01 of this Current Report on Form 8-K, including the Form 10 disclosures, is incorporated into this item by reference.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

The disclosure set forth in Item 2.01 of this Current Report on Form 8-K, including the Form 10 disclosures, is incorporated into this item by reference.

Effective as at the closing of the Mergers, Subbarao Uppaluri resigned from the board of directors of eXegenics.

At the closing of the Mergers, in accordance with our bylaws for filling newly-created board vacancies, our directors appointed David Eichler and Michael Reich to our board of directors. On March 29, 2007, Richard A, Lerner, M.D. and Melvin L. Rubin, M.D. were added to our board of directors. All directors hold office until the next annual meeting of stockholders and the election and qualification of their successors.

After the closing of the Mergers, our board of directors appointed the following persons to serve in the offices set forth immediately after their names:

Name	Title
Phillip Frost, M.D.	**Chief Executive Officer and Chairman of the Board**
Dale R. Pfost, Ph.D.	**President**
Samuel J. Reich	**Executive Vice President**
Adam Logal	**Executive Director of Finance, Chief Accounting Officer, Treasurer and Secretary**
Shalesh Kaushal, M.D., Ph.D.	**Chief Scientific Officer**
Denis O'Shaughnessy, Ph.D.	**Senior Vice President of Clinical Development**

Officers serve at the discretion of our board of directors.

Item 5.06. Change in Shell Company Status.

The disclosure set forth in Item 2.01 to this Current Report is incorporated into this item by reference. As a result of the completion of the Mergers, we believe we are no longer a Shell Company as that term is defined in Rule 12(b)-2 of the Exchange Act.

Item 9.01. Financial Statements and Exhibits.

(a) Financial statements of business acquired.

(b) Pro forma financial information.

INDEX TO FINANCIAL STATEMENTS

Froptix Corporation
(A Development Stage Company)

Financial Statements

Year Ended December 31, 2006

Contents

ERNST & YOUNG

Ernst & Young LLP
Suite 3900
200 South Biscayne Boulevard
Miami, Florida 33131-5313

Phone: (305) 358-4111
www.ey.com

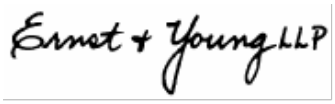
Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
Froptix Corporation

We have audited the accompanying balance sheet of Froptix Corporation (a Florida corporation in the development stage) as of December 31, 2006, and the related statements of operations, changes in stockholders' equity and cash flows for the period from June 23, 2006 (inception) to December 31, 2006. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Froptix Corporation as of December 31, 2006, and the results of its operations and its cash flows for the period from June 23, 2006 (inception) to December 31, 2006, in conformity with U.S. generally accepted accounting principles.



Certified Public Accountants

Miami, Florida
March 23, 2007

Froptix Corporation
(A Development Stage Company)

Balance Sheet

December 31, 2006

Assets	
Current assets:	
Cash and cash equivalents	$ 115,765
Total assets	$ 115,765
Liabilities and stockholders' equity	
Current liabilities:	
Accounts payable and accrued expenses	$ 95,247
Commitments and contingencies	—
Stockholders' equity :	
Common stock, $0.01 par value; authorized 1,000 shares; issued and outstanding 905 shares	9
Additional paid-in capital	897,288
Deficit accumulated during development stage	(876,779)
Total stockholders' equity	20,518
Total liabilities and stockholders' equity	$ 115,765

See accompanying notes.

Froptix Corporation
(A Development Stage Company)

Statement of Operations

For the Period From June 23, 2006 (Inception) to December 31, 2006

Revenues	$ —
Operating expenses:	
Research and development	507,866
General and administrative	374,610
Operating loss	(882,476)
Interest income	5,697
Loss before income taxes	(876,779)
Income taxes	—
Net loss	$ (876,779)
Basic and diluted (loss) per share	$ (990)
Basic and diluted weighted average shares outstanding	885

See accompanying notes.

Froptix Corporation
(A Development Stage Company)

Statement of Changes in Stockholders' Equity

For the Period From June 23, 2006 (Inception) to December 31, 2006

	Common stock		Additional Paid-in Capital	Deficit Accumulated During Development Stage	Total Stockholders' Equity
	Shares	Amount			
Issuance of common stock at inception at $705.89 per share	850	$ 8	$599,992	$ —	$ 600,000
Issuance of common stock at $705.89 per share on August 30, 2006	55	1	38,823	—	38,824
Stock-based compensation expense	—	—	258,473	—	258,473
Net loss	—	—	—	(876,779)	(876,779)
Balance, December 31, 2006	**905**	**$ 9**	**$897,288**	**$ (876,779)**	**$ 20,518**

See accompanying notes.

Froptix Corporation
(A Development Stage Company)

Statement of Cash Flows

For the Period From June 23, 2006 (Inception) to December 31, 2006

Operating activities	
Net loss	$(876,779)
Adjustments to reconcile net loss to net cash used in operating activities:	
Stock-based compensation expense	258,473
Changes in operating liabilities:	
Accounts payable and accrued expenses	95,247
Net cash used in operating activities	(523,059)
Financing activity	
Proceeds from sales of common stock, net	638,824
Net increase in cash and cash equivalents	115,765
Cash and cash equivalents, beginning of period	—
Cash and cash equivalents, end of period	$ 115,765

See accompanying notes.

1. Organization and Business Activities

Froptix Corporation (the Company) was incorporated in Florida on June 23, 2006 (inception). An affiliate of the Company assigned license and research agreements with the University of Florida to the Company on June 23, 2006 (see Note 6). The Company is a development stage ophthalmic pharmaceutical company engaged in the development of therapeutics to treat and prevent ophthalmic disorders and diseases. The Company is currently devoting substantially all of its efforts toward conducting pharmaceutical discovery and development, and negotiating strategic corporate relationships.

2. Development Stage Risks and Liquidity

The Company has not generated any revenues and has incurred losses since its inception. There is no assurance that profitable operations can be achieved, and, if ever achieved, can be sustained on a continuing basis. In addition, development activities and clinical and preclinical testing and commercialization of the Company's proprietary technology will require significant additional financing. The Company's deficit accumulated during the development stage through December 31, 2006 is $876,779, and the Company's management expects to incur substantial and increasing losses in future periods.

Further, the Company's future operations are dependent on, among other factors, the services of its future employees and consultants, the success of the Company's research, development, manufacture, and marketing activities, and, ultimately, regulatory and market acceptance of the Company's proposed future products.

The financial statements do not include any adjustments that might result from the outcome of above-mentioned uncertainties.

The Company's founders have committed to finance future operations with additional capital contributions of up to $1 million. However, if additional funds are raised through a combination of private placements of equity and/or debt, the founders may reduce their capital contribution commitment to the extent of funds raised, dollar for dollar, up to $1 million. See Note 8.

3. Summary of Significant Accounting Policies

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Actual results could differ from those estimates.

Cash and Cash Equivalents

The Company considers all highly liquid investments with maturities of three months or less when purchased to be cash equivalents. As of December 31, 2006, cash and cash equivalents consists of bank deposit accounts and money market funds.

Research and Development

Research and product development costs are charged to expense as incurred.

Income Taxes

Income taxes are accounted for under the asset-and-liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and the respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in operations in the period that includes the enactment date.

Deferred income taxes are recorded for the tax effects of temporary differences between the basis of assets and liabilities recognized for financial reporting purposes and the tax basis, and net operating losses and credits. The most significant component of the Company's net deferred tax assets as of December 31, 2006 is its net operating loss carryforward. A full valuation allowance was established for the deferred tax assets, as management of the Company does not believe realization of the tax benefits is more likely than not.

3. Summary of Significant Accounting Policies (continued)

Comprehensive Loss

The Company's comprehensive loss has no components other than its net loss.

Loss Per Share

(Loss) per share is computed by dividing net loss by the weighted average number of shares of common stock outstanding during the year. All outstanding stock options and warrants are considered potential common stock. The dilutive effect, if any, of stock options and warrants is calculated using the treasury stock method. The Company's stock options (discussed in Note 4) were not included in the calculation of diluted loss per share because their impact is antidilutive.

Stock-Based Compensation

We account for non-employee stock-based compensation in accordance with Statement of Financial Accounting Standards No. 123R, *Accounting for Stock Based Compensation* (SFAS 123R) and Emerging Issues Task Force No. 96-18 *Accounting for Equity Instruments That are Issued to Other Employees for Acquiring or in Conjunction with Selling Goods and Services* (EITF 96-18). SFAS 123R and EITF 96-18 require that we initially account for our stock-based compensation grants to non-employees based on the fair value of the stock-based compensation on the date of grant with subsequent adjustments to compensation expense as the fair value of the equity instrument changes over its vesting period.

4. Stock-Based Compensation

SFAS 123R requires that cash flows resulting from tax deductions in excess of the cumulative compensation cost recognized for options exercised (excess tax benefits) be classified as financing cash flows. The Company has sufficient net operating losses to generally eliminate cash payments for income taxes to date. The fair value of each option grant is estimated on the date of grant using the Black-Scholes option pricing model, with the following weighted average assumptions: expected life of ten years, expected dividend yield of zero, volatility of 35%, and risk-free interest rate of approximately 4.5%.

During 2006, the Company entered into a stock option agreement with a consultant by granting nonqualified stock options to purchase an aggregate of 65 shares of the Company's common stock. The options are exercisable for a period of ten years from the date of grant and vest over four years, and were accounted for in accordance with EITF 96-18. As of December 31, 2006, none of these options to purchase shares of common stock were exercisable. The weighted average remaining contractual life of these options outstanding at December 31, 2006 is 9.5 years. The fair value of the options was determined using the Black-Scholes options pricing model. The exercise price is $705.89. The estimated fair value of the non-employee options as of December 31, 2006 was $2,181,000, of which $258,000 was recognized as compensation expense in the statement of operations from inception to December 31, 2006 and the remaining

4. Stock-Based Compensation (continued)

amount will be charged to expense on pro rata basis over the remaining three and one half year vesting period. The total compensation expense will also continue to be remeasured for changes in the fair value of the equity instrument over the vesting period of the option, which may result in future compensation expense being significantly different than the amount estimated as of December 31, 2006.

5. Income Tax

There is no provision for or benefit from income taxes for the period from June 23, 2006 (inception) to December 31, 2006. As of December 31, 2006, the Company has federal and state net operating loss carryforwards of approximately $0.9 million that begin to expire in 20 years. Pursuant to the Internal Revenue Code, the annual utilization of the federal and certain state carryforwards may be limited in terms of utilization in certain circumstances, including a change in ownership of the Company, as defined. The Company will not recognize a tax benefit for financial reporting purposes for net operating losses or credit carryforwards, until such time as management believes it is more likely than not that the Company's future operations will generate sufficient taxable income to be able to realize such benefits.

6. License and Research Agreements

In April 2006, an affiliate of the Company and the University of Florida entered into an exclusive worldwide license agreement for certain patents and technology rights. The agreement provides for royalty payments equal to various percentages of future commercial sales of products manufactured using the licensed technology, as defined, if any, through the expiration of the licensed patent.

In April 2006, an affiliate of the Company entered into a research agreement with the University of Florida to conduct research on behalf of the affiliate of the Company. Both the license agreement and the research agreement were assigned to the Company on June 23, 2006.

As part of the research agreement, the Company has agreed to make bi-annual payments during each budget year as follows:

Year 1: $250,000, upon full execution of the agreement and $250,000 at the six month anniversary of the effective date of the agreement.

6. License and Research Agreements (continued)

Year 2: $250,000 at the beginning of the budget year and $250,000 at the end of the sixth month of the budget year.

Year 3: $250,000 at the beginning of the budget year and $250,000 at the end of the sixth month of the budget year.

The agreement is a fixed price agreement and either party may terminate the agreement upon ninety (90) days prior written notice to the other. The Company has made the first year payments totaling $500,000 to the University of Florida in 2006.

7. Related Party Transactions

Included in the statement of operations are General and Administrative expenses of $63,000 for consulting services provided by officers of the Company.

8. Subsequent Event

On January 11, 2007, the Company entered into an agreement with Acuity Pharmaceuticals, Inc. (Acuity) and The Frost Group, LLC (Frost Group), whose principal shareholders are also the majority shareholders of the Company, whereby the Frost Group will provide a subordinated secured line of credit, up to $7,000,000 to Acuity; the Company will merge with and into a wholly-owned subsidiary of a publicly traded “shell” company (Public Shell) controlled by the Frost Group and certain affiliates and associates of the Frost Group; and Acuity will also merge with and into a wholly-owned subsidiary of the Public Shell. The merger is expected to occur by April 30, 2007. However, there are no assurances the merger will be achieved by April 30, 2007.

ACUITY PHARMACEUTICALS, INC.
(A Development-Stage Company)

Financial Statements

December 31, 2006 and 2005

(With Independent Auditors' Report Thereon)

ACUITY PHARMACEUTICALS, INC.
(A Development-Stage Company)

Table of Contents

Independent Auditors' Report

The Board of Directors
Acuity Pharmaceuticals, Inc.:

We have audited the accompanying balance sheets of Acuity Pharmaceuticals, Inc. (a development-stage company) as of December 31, 2006 and 2005, and the related statements of operations, redeemable convertible preferred stock and stockholders' equity (deficit), and cash flows for each of the years in the three year period ended December 31, 2006 and period from March 27, 2003 (inception) to December 31, 2006. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Acuity Pharmaceuticals, Inc. as of December 31, 2006 and 2005, and the results of its operations and its cash flows for each of the years in the three year period ended December 31, 2006 and period from March 27, 2003 (inception) to December 31, 2006, in conformity with U.S. generally accepted accounting principles.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in note 2 to the financial statements, the Company has suffered recurring losses from operations and has a total stockholders' deficit that raises substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are described in note 2. The financial statements do not include any adjustments that might result from the outcome of these uncertainties.

As discussed in notes 3 and 7 to the financial statements, effective January 1, 2006, the Company adopted the fair value method of accounting for stock-based compensation as required by Statement of Financial Accounting Standards No. 123(R), *Share-Based Payment*.

/s/ KPMG LLP

Philadelphia, Pennsylvania

March 30, 2007

ACUITY PHARMACEUTICALS, INC.
(A Development-Stage Company)

Balance Sheets

December 31, 2006 and 2005

	2006	2005
Assets		
Current assets:		
Cash and cash equivalents	$ 210,497	8,214,989
Short-term investments	638,748	1,614,072
Prepaid expenses and other current assets	17,753	156,179
Total current assets	866,998	9,985,240
Property and equipment, net	90,253	74,816
Deferred financing costs	24,180	40,299
Total assets	$ 981,431	10,100,355
Liabilities, Redeemable Convertible Preferred Stock, and Stockholders' Equity (Deficit)		
Current liabilities:		
Current portion of long-term notes payable	$ 1,666,667	—
Accounts payable	3,136,255	1,631,358
Accrued compensation	298,584	186,734
Accrued expenses	406,692	1,090,608
Total current liabilities	5,508,198	2,908,700
Long-term notes payable, net of unamortized warrant discount of $167,919 and $279,863 at December 31, 2006 and 2005, respectively	2,165,414	3,720,137
Total liabilities	7,673,612	6,628,837
Commitments and contingencies (note 9)		
Series B Redeemable Convertible Preferred Stock, $0.01 par value; authorized 13,255,179 shares; issued and outstanding 8,817,679 shares at December 31, 2006 and 2005 (liquidation value of $38,148,330 at December 31, 2006)	25,987,978	21,081,644
Stockholders' equity (deficit):		
Series A Convertible Preferred Stock, $0.01 par value; authorized, issued, and outstanding 742,000 shares at December 31, 2006 and 2005 (liquidation value of $1,484,000 at December 31, 2006)	7,420	7,420
Common stock, $0.01 par value; authorized 19,584,956 shares; issued and outstanding 2,116,877 and 2,017,532 shares at December 31, 2006 and 2005, respectively	21,169	20,175
Additional paid-in capital	—	942,639
Deferred compensation	—	(21,770)
Deficit accumulated during development stage	(32,708,748)	(18,558,590)
Total stockholders' equity (deficit)	(32,680,159)	(17,610,126)
Total liabilities, redeemable convertible preferred stock and stockholders' equity (deficit)	$ 981,431	10,100,355

See accompanying notes to financial statements.

ACUITY PHARMACEUTICALS, INC.
(A Development-Stage Company)

Statements of Operations

Years ended December 31, 2006, 2005 and 2004 and
Period from March 27, 2003 (inception) to December 31, 2006

	Year ended December 31			Period from March 27, 2003 (inception) to December 31, 2006
	2006	2005	2004	
Revenues	$ —	—	—	—
Operating expenses:				
Research and development	8,027,109	8,481,971	3,603,516	21,768,369
General and administrative	2,698,252	1,688,903	1,340,286	7,149,511
Operating loss	(10,725,361)	(10,170,874)	(4,943,802)	(28,917,880)
Interest income	252,135	253,916	14,944	522,341
Interest expense, including amortization of beneficial conversion and warrant costs of $111,944, $32,651, $406,516, and $551,111 in 2006, 2005 and 2004 and from March 27, 2003 (inception) to December 31, 2006, respectively	(618,983)	(182,753)	(453,524)	(1,255,260)
Total interest income (expense)	(366,848)	71,163	(438,580)	(732,919)
Net loss	$(11,092,209)	(10,099,711)	(5,382,382)	(29,650,799)

See accompanying notes to financial statements.

ACUITY PHARMACEUTICALS, INC.
(A Development-Stage Company)

Statements of Redeemable Convertible Preferred Stock and Stockholders' Equity (Deficit)

Period from March 27, 2003 (inception) to December 31, 2006

	Series B Redeemable Convertible Preferred Stock		Stockholders' equity (deficit)								
			Series A Convertible Preferred Stock		Common stock		Additional paid-in capital	Deferred compensation	Stock subscription receivable	Deficit accumulated during development stage	Total stockholders' equity (deficit)
	Shares	Amount	Shares	Amount	Shares	Amount					
Balance, March 27, 2003	—	$ —	—	$ —	—	$ —	$ —	$ —	$ —	$ —	$ —
Issuance of common stock at $0.01 per share in connection with Ocugen merger	—	—	—	—	133,333	1,333	—	—	(1,125)	—	208
Issuance of common stock at $0.01 per share in connection with employment and board of director agreements	—	—	—	—	146,661	1,467	—	—	(340)	—	1,127
Issuance of common stock in connection with a license and research agreement	—	—	—	—	408,334	4,083	608,418	—	—	—	612,501
Issuance of common stock at $1.50 per share on May 30, 2003, net of $17,615 in offering costs	—	—	—	—	873,683	8,737	1,284,173	—	(25,500)	—	1,267,410
Issuance of preferred stock at $2 per share, net of issuance costs of $112,276	—	—	612,834	6,128	—	—	1,107,264	—	(521,200)	—	592,192
Receipt of subscriptions receivable	—	—	—	—	—	—	—	—	26,241	—	26,241
Issuance of common stock at $1.50 per share to vendors, employees, and board of directors for services	—	—	—	—	99,032	990	147,557	—	—	—	148,547
Compensation resulting from grant of options to employees at below fair market value	—	—	—	—	—	—	31,950	(31,950)	—	—	—
Issuance of options to vendors for services	—	—	—	—	—	—	53,100	—	—	—	53,100
Amortization of deferred compensation	—	—	—	—	—	—	—	828	—	—	828
Net loss	—	—	—	—	—	—	—	—	—	(3,076,497)	(3,076,497)
Balance, December 31, 2003	—	—	612,834	6,128	1,661,043	16,610	3,232,462	(31,122)	(521,924)	(3,076,497)	(374,343)
Issuance of Series A preferred stock at $2 per share	—	—	129,166	1,292	—	—	257,040	—	—	—	258,332
Issuance of warrants to purchase 155,300 shares of common stock at $0.01 per share in connection with issuance of convertible notes payable	—	—	—	—	—	—	203,258	—	—	—	203,258
Beneficial conversion feature on convertible notes	—	—	—	—	—	—	203,258	—	—	—	203,258
Issuance of 100,000 shares of Series B preferred stock, warrants and options to purchase 141,000 shares of Series B preferred stock at $1.65, and 43,500 and 12,500 shares of common stock at $1.65 and $0.20, respectively, in connection with the settlement of employment liabilities	100,000	200,000	—	—	—	—	137,600	—	—	—	137,600
Issuance of Series B preferred stock at $2 per share, net of $219,072 in offering costs and a $15,000 subscription receivable	4,101,750	7,969,428	—	—	—	—	—	—	—	—	—
Issuance of Series B preferred stock in connection with the conversion of notes payable	514,179	1,028,357	—	—	—	—	—	—	—	—	—
Issuance of warrants to purchase 512,719 shares of common											

stock at $0.01 in connection with the sale of Series B preferred stock	—	(97,417)	—	—	—	—	97,417	—	—	—	97,417
Issuance of warrants to purchase 15,000 shares of common stock at $2 in connection with the sale of Series B preferred stock	—	(1,650)	—	—	—	—	1,650	—	—	—	1,650
Issuance of common stock in connection with employment or service agreements	—	—	—	—	83,434	835	75,923	—	—	—	76,758
Receipt of subscriptions receivable	—	—	—	—	—	—	—	—	521,924	—	521,924
Compensation resulting from grant of options to employees at below fair market value	—	—	—	—	—	—	5,225	(5,225)	—	—	—
Issuance of options to vendors for services	—	—	—	—	—	—	140,800	—	—	—	140,800
Amortization of deferred compensation	—	—	—	—	—	—	—	12,589	—	—	12,589
Preferred stock dividend	—	192,040	—	—	—	—	(192,040)	—	—	—	(192,040)
Accretion of redemption premium on Series B preferred stock	—	355,066	—	—	—	—	(355,066)	—	—	—	(355,066)
Accretion of cost incurred and warrants in connection with sale of Series B preferred stock	—	16,054	—	—	—	—	(16,054)	—	—	—	(16,054)
Charge related to repricing of outstanding options	—	—	—	—	—	—	7,417	—	—	—	7,417
Net loss	—	—	—	—	—	—	—	—	—	(5,382,382)	(5,382,382)
Balance, December 31, 2004	4,715,929	$ 9,661,878	742,000	$ 7,420	1,744,477	$ 17,445	$ 3,798,890	$ (23,758)	$ —	$ (8,458,879)	$ (4,658,882)

	Series B Redeemable Convertible Preferred Stock		Stockholders' equity (deficit)								
			Series A Convertible Preferred Stock		Common stock		Additional paid-in capital	Deferred compensation	Stock subscription receivable	Deficit accumulated during development stage	Total stockholders' equity (deficit)
	Shares	Amount	Shares	Amount	Shares	Amount					
Balance, December 31, 2004	4,715,929	$ 9,661,878	742,000	$ 7,420	1,744,477	$ 17,445	$ 3,798,890	$ (23,758)	$ —	$ (8,458,879)	$ (4,658,882)
Issuance of warrants to purchase 25,000 shares of common stock at $0.01 per share in connection with issuance of long-term notes payable	—	—	—	—	—	—	4,609	—	—	—	4,609
Issuance of warrants to purchase 200,000 shares of Series B preferred stock at $2 per share in connection with issuance of long-term notes payable	—	—	—	—	—	—	307,905	—	—	—	307,905
Issuance of Series B preferred stock at $2 per share, net of $60,342 in offering costs and collection of a $15,000 stock subscription receivable	4,101,750	8,158,158	—	—	—	—	—	—	—	—	—
Issuance of warrants to purchase 512,719 shares of common stock at $0.01 in connection with the sale of Series B preferred stock	—	(97,417)	—	—	—	—	97,417	—	—	—	97,417
Issuance of common stock in connection with a collaboration agreement and certain service agreements	—	—	—	—	255,500	2,555	48,545	—	—	—	51,100
Issuance of options to vendors for services	—	—	—	—	—	—	19,700	—	—	—	19,700
Exercises of common stock options	—	—	—	—	17,555	175	3,336	—	—	—	3,511
Compensation relating to changes in fair market value of common stock for repriced employee options	—	—	—	—	—	—	17,592	(17,592)	—	—	—
Compensation relating to changes in fair market value of common stock for repriced options to vendors	—	—	—	—	—	—	3,670	—	—	—	3,670
Amortization of deferred compensation	—	—	—	—	—	—	—	19,580	—	—	19,580
Preferred stock dividend	—	1,127,491	—	—	—	—	(1,127,491)	—	—	—	(1,127,491)
Accretion of redemption premium on Series B preferred stock	—	2,155,606	—	—	—	—	(2,155,606)	—	—	—	(2,155,606)
Accretion of cost incurred and warrants in connection with sale of Series B preferred stock	—	75,928	—	—	—	—	(75,928)	—	—	—	(75,928)
Net loss	—	—	—	—	—	—	—	—	—	(10,099,711)	(10,099,711)
Balance, December 31, 2005	8,817,679	21,081,644	742,000	7,420	2,017,532	20,175	942,639	(21,770)	—	(18,558,590)	(17,610,126)
Reclassification due to adoption of SFAS No. 123(R)	—	—	—	—	—	—	(21,770)	21,770	—	—	—
Issuance of common stock in connection with certain service agreements	—	—	—	—	10,000	100	7,400	—	—	—	7,500
Stock-based compensation	—	—	—	—	—	—	223,595	—	—	—	223,595
Issuance of warrants and options to vendors for services	—	—	—	—	—	—	79,397	—	—	—	79,397
Exercises of common stock options at $0.20 to $0.25 per share	—	—	—	—	11,695	117	2,285	—	—	—	2,402
Exercises of common stock warrants at $0.01 per share	—	—	—	—	77,650	777	—	—	—	—	777
Compensation relating to changes in fair market value of common stock for repriced employee options	—	—	—	—	—	—	604,460	—	—	—	604,460
Compensation relating to option modification	—	—	—	—	—	—	10,379	—	—	—	10,379
Preferred stock dividend	—	1,558,083	—	—	—	—	(1,558,083)	—	—	—	(1,558,083)
Accretion of redemption premium on Series B preferred stock	—	3,256,389	—	—	—	—	(290,302)	—	—	(2,966,087)	(3,256,389)
Accretion of cost											

incurred and warrants in connection with sale of Series B preferred stock	—	91,862	—	—	—	—	—	—	—	(91,862)	(91,862)
Net loss	—	—	—	—	—	—	—	—	—	(11,092,209)	(11,092,209)
Balance, December 31, 2006	8,817,679	$ 25,987,978	742,000	$ 7,420	2,116,877	$ 21,169	$ —	$ —	$ —	$ (32,708,748)	$ (32,680,159)

See accompanying notes to financial statements.

ACUITY PHARMACEUTICALS, INC.
(A Development-Stage Company)
Statements of Cash Flows
Years ended December 31, 2006, 2005 and 2004 and
Period from March 27, 2003 (inception) to December 31, 2006

	Year ended December 31			Period from March 27, 2003 (inception) to December 31, 2006
	2006	2005	2004	
Cash flows from operating activities:				
Net loss	$(11,092,209)	(10,099,711)	(5,382,382)	(29,650,799)
Adjustments to reconcile net loss to net cash used in operating activities:				
Depreciation	23,898	16,453	8,279	50,685
Amortization of debt discount and beneficial conversion feature related to convertible notes	—	—	406,516	406,516
Amortization of debt discount related to long-term notes payable	111,944	32,651	—	144,595
Amortization of deferred compensation	—	19,580	12,589	32,997
Amortization of deferred financing costs	16,119	4,701	18,651	39,471
Interest expense on convertible debt	—	—	28,357	28,357
Option/warrant compensation — employees and vendors	313,371	19,700	278,400	664,571
Stock compensation — employees and vendors	7,500	1,100	276,758	433,905
Noncash expenses on repricing of options	604,460	3,670	7,417	615,547
Noncash license and research expense	—	50,000	—	662,501
Changes in operating assets and liabilities:				
Prepaid expenses and other current assets	138,426	(126,132)	(18,734)	(17,753)
Accounts payable	1,504,897	1,367,983	(487,010)	3,136,255
Accrued compensation	111,850	92,964	(170,061)	298,584
Accrued expenses	(683,916)	899,992	170,616	406,692
Net cash used in operating activities	(8,943,660)	(7,717,049)	(4,850,604)	(22,747,876)
Cash flows from investing activities:				
Purchase of property and equipment	(39,335)	(39,635)	(28,523)	(140,938)
Purchase of short-term investments	(5,003,676)	(23,950,085)	—	(28,953,761)
Proceeds from sale of short-term investments	5,979,000	22,336,013	—	28,315,013
Net cash provided by (used in) investing activities	935,989	(1,653,707)	(28,523)	(779,686)
Cash flows from financing activities:				
Cash paid for debt issuance costs	—	(45,000)	(18,651)	(63,651)
Proceeds from sale of common stock, net	3,179	3,511	724	1,302,400
Proceeds from sale of preferred stock, net	—	8,158,158	8,748,960	17,499,310
Proceeds from issuance of convertible notes payable	—	—	1,000,000	1,000,000
Proceeds from issuance of long-term notes payable	—	4,000,000	—	4,000,000
Net cash provided by financing activities	3,179	12,116,669	9,731,033	23,738,059
Net (decrease) increase in cash and cash equivalents	(8,004,492)	2,745,913	4,851,906	210,497
Cash and cash equivalents, beginning of period	8,214,989	5,469,076	617,170	—
Cash and cash equivalents, end of period	$ 210,497	8,214,989	5,469,076	210,497

See accompanying notes to financial statements.

(1) Organization and Business Activities

Acuity Pharmaceuticals, Inc. (the Company) was incorporated in Delaware on March 27, 2003 (inception). On March 31, 2003, the Company merged with Ocugen, LLC and became the surviving company. All 133,333 common shares of Ocugen, LLC were converted to 133,333 common shares of the Company. The Company is a development-stage ophthalmic pharmaceutical company engaged in the development of therapeutics to treat and prevent ophthalmic disorders and diseases. The Company is currently devoting substantially all of its efforts toward conducting pharmaceutical discovery and development, licensing technology, planning for regulatory approval for products under development, negotiating strategic corporate relationships, recruiting personnel, and raising capital.

(2) Development-Stage Risks and Liquidity

The Company has not generated any revenues and has not yet achieved profitable operations. There is no assurance that profitable operations, if ever achieved, could be sustained on a continuing basis. In addition, development activities and clinical and preclinical testing and commercialization of the Company's proprietary technology will require significant additional financing. The Company's deficit accumulated during the development stage through December 31, 2006 aggregated $32,708,748, including $3,057,949 of Series B Redeemable Convertible Preferred Stock (Series B) accretion of the redemption premium and amortization of costs incurred, and the Company's management expects to incur substantial and increasing losses in future periods. Further, the Company's future operations are dependent on, among other factors, the services of its employees and consultants, the success of the Company's research, development, manufacture, and, ultimately, upon regulatory approval and market acceptance of the Company's proposed future products.

The Company's future operations are dependent on the timely and successful completion of its ongoing research and development, the development of competitive therapies by other biotechnology and pharmaceutical companies, other treatment modalities for the Company's targeted diseases, and ultimately, regulatory approval and market acceptance of the Company's proposed future products.

The Company has not generated any revenues from product sales and expects to incur substantial losses in future periods. There is no assurance that profitable operations, if ever achieved, could be sustained on a continuing basis. In addition, development activities and clinical and preclinical testing and commercialization of the Company's proprietary technology will require significant additional financing. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

In order to continue as a going concern, additional funding will be required before mid-2007. The Company plans to finance future operations with a combination of private placements; payments from potential strategic research and development, licensing, and/or marketing arrangements; public offerings; debt; revenues from future product sales, if any; and potential sale of the Company. The Company has not generated positive cash flows from operations, and there are no assurances that the Company will be successful in obtaining an adequate level of financing for the development and commercialization of its planned products. The ability of the Company to continue as a going concern is dependent upon the infusion of capital. See note 12 for a discussion of subsequent events.

(Continued)

(3) Summary of Significant Accounting Policies

(a) Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

(b) Cash, Cash Equivalents and Investments

For the purpose of the statements of cash flows, the Company considers all highly liquid investment instruments with an original maturity of three months or less when purchased to be cash equivalents. As of December 31, 2006 and 2005, cash and cash equivalents consist of bank deposit accounts and money market funds. Highly liquid investment instruments with an original maturity of greater than three months are classified as investments. Investments are considered available-for-sale and are carried at fair value which approximates amortized cost as of December 31, 2006 and 2005.

(c) Property and Equipment, net

Property and equipment are recorded at cost. Depreciation is provided using the straight-line method over the estimated useful lives of the assets, generally five to ten years. Expenditures for repairs and maintenance are charged to expense as incurred, while betterments are capitalized.

(d) Impairment of Long-Lived Assets

In accordance with Statement of Financial Accounting Standards (SFAS) No. 144, *Accounting for Impairment or Disposal of Long-Lived Assets*, long-lived assets, such as property and equipment, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, then an impairment charge is recognized by the amount by which the carrying amount of the asset exceeds the fair value of the asset. As of December 31, 2006, management believes that no revision of the remaining useful lives or write-down of long-lived assets is required.

(e) Research and Development

Research and product development costs are charged to expense as incurred.

(f) Income Taxes

Income taxes are accounted for under the asset-and-liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and the respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary

(Continued)

differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in operations in the period that includes the enactment date.

(g) Stock-Based Compensation

Prior to January 1, 2006, the Company applied the intrinsic-value-based method of accounting prescribed by Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to*

Employees (APB No. 25), and related interpretations including FASB Interpretation No. 44 (FIN 44), *Accounting for Certain Transactions Involving Stock Compensation, an Interpretation of APB Opinion No. 25*, to account for its fixed-plan stock options. Under the intrinsic-value-based method, compensation expense is recorded on the date of grant only if the current market price of the underlying stock exceeded the exercise price.

Effective January 1, 2006, the Company adopted SFAS No. 123(R), *Share-Based Payment*. SFAS No. 123(R) replaces SFAS No. 123, *Accounting for Stock-Based Compensation*, and Supersedes APB No. 25. SFAS No. 123(R) requires that all stock-based compensation be recognized as an expense in the financial statements and that such cost be measured at the fair value of the award. The Company has adopted the prospective transition method provided for under SFAS No. 123(R) for private companies and, consequently, has not restated results from prior periods. Under this transition method, compensation cost recognized in 2006 associated with stock options includes (i) amortization related to all stock option awards granted/modified on or subsequent to January 1, 2006, based on the estimated grant date fair value using the Black-Scholes option-pricing model, and (ii) amortization of the intrinsic value recorded as deferred compensation for options granted prior to January 1, 2006 being accounted for under APB Opinion No. 25. Option awards granted prior to adoption of SFAS No. 123(R) continue to follow the provisions of APB Opinion No. 25 and FIN 44 until modified and or settled.

Prior to the adoption of SFAS No. 123(R), the Company presented all tax benefits resulting from the exercise of stock options as operating cash flows in the statements of cash flows, if any. SFAS No. 123(R) requires that cash flows resulting from tax deductions in excess of the cumulative compensation cost recognized for options exercised (excess tax benefits) be classified as financing cash flows. The Company has sufficient net operating loss carryforwards to generally eliminate cash payments for income taxes.

(4) Property and Equipment

Property and equipment consist of the following at December 31, 2006 and 2005:

	2006	2005
Laboratory equipment	$ 98,328	67,067
Computer and office equipment	42,610	34,536
	140,938	101,603
Less accumulated depreciation	(50,685)	(26,787)
	$ 90,253	74,816

(Continued)

Depreciation expense was $23,898, $16,453 and $8,279 for the years ended December 31, 2006, 2005 and 2004, respectively, and $50,685 for the period from March 27, 2003 (inception) to December 31, 2006.

(5) Debt

(a) Term Note

In September 2005, the Company entered into a $4,000,000 term loan. The term loan bears interest at 12.23%, which is payable monthly commencing September 15, 2005. Interest expense for the year ended December 31, 2006 and 2005 was $489,200 and $145,401, respectively, and $634,601 for the period from March 27, 2003 (inception) to December 31, 2006. The principal is payable in 12 equal monthly installments commencing August 2007. Principal on the term loan matures as follows: 2007 — $1,666,667 and 2008 — $2,333,333. The term loan is collateralized by all personal property of the Company, except intellectual property, and contains certain negative covenants that limit the payment of cash dividends, redemption of equity securities, change in ownership, and the creation or extinguishment of debt. In connection with the issuance of the term note, the Company issued warrants to purchase 200,000 shares of Series B at $2.00 per share and warrants to purchase 25,000 shares of common stock at $0.01 per share.

The fair value of the warrants was estimated on the date of grant using the Black-Scholes option pricing model. The Company allocated $312,514 of the proceeds from the term loan to the warrants, based on the relative fair values of the loan and warrants. The warrants were accounted for as a discount to the term loan and are being charged to expense as interest over the term of the loan. Amortization of the debt discount associated with the value of the warrants was $111,944 and $32,651 for the years ended December 31, 2006 and 2005, respectively, and $144,595 for the period from March 27, 2003 (inception) to December 31, 2006.

The Company incurred $45,000 of debt issuance cost, which has been deferred and will be amortized over the life of the debt. Amortization was $16,119 and $4,701 for the years ended December 31, 2006 and 2005, respectively, and $20,820 for the period from March 27, 2003 (inception) to December 31, 2006.

(b) Convertible Notes Payable

From March to June 2004, the Company issued 8% Convertible Notes (the Notes), resulting in aggregate cash proceeds of $1,000,000. Interest expense related to the Notes was $28,357 for the year ended December 31, 2004. The Notes were convertible into Series B and provided for the issuance of warrants to purchase 155,300 shares, as amended, of common stock at $0.01 per share (note 7). In connection with the issuance of the Notes, the Company incurred aggregate financing costs of $18,651, which were being amortized to interest expense over the term of the Notes. In September 2004, $1,028,357, which represented the total principal of the Notes and the interest accrued thereon, was converted into 514,179 shares of Series B. Unamortized deferred financing costs were charged to interest expense at the time of the conversion. Amortization of the deferred financing costs was $18,651 for the year ended December 31, 2004.

(Continued)

The fair value of the warrants was estimated on the date of grant using the Black-Scholes option pricing model. The Company allocated $203,258 of the proceeds from the Notes to the warrants, based on the relative fair values of the Notes and warrants. The warrants were accounted for as a discount to the Notes and were charged to expense as interest over the term of the Notes. Unamortized discount was charged to interest expense at the time of the conversion. Amortization of the debt discount associated with the value of the warrants was $203,258 for the year ended December 31, 2004.

Additionally, in accordance with Emerging Issues Task Force (EITF) Issue No. 98-5, *Accounting for Convertible Securities with Beneficial Conversion Features of Contingently Adjustable Conversion Ratios*, and EITF Issue No. 00-27, *Application of Issue No. 98-5 to Certain Convertible Instruments*, the Company recorded an additional debt discount of $203,258, which represents the value of the beneficial conversion feature (BCF) of the Notes. The value allocated to the BCF represents the excess of the fair market value of the underlying preferred stock issued to the holders of the Notes over the adjusted value of the Notes, after deducting the fair value ascribed to the warrants issued in connection with the Notes. This additional debt discount was being amortized to interest expense over the term of the Notes. Unamortized discount was charged to interest expense at the time of the conversion. Amortization of the BCF was $203,258 for the year ended December 31, 2004.

(6) Redeemable Convertible Preferred Stock

(a) Series A Convertible Preferred Stock

The Company issued an aggregate of 742,000 shares of Series A Convertible Preferred Stock (Series A) in December 2003 and January 2004 at $2.00 per share. Gross proceeds to the Company were $1,484,000.

Series A is convertible at any time at the option of the holder, into the number of shares of common stock obtained by dividing the original purchase price by the conversion price, as defined, subject to adjustment pursuant to the terms of Series A. The Series A is to be automatically converted into common stock at the applicable conversion rate at any time upon the earlier of (i) the election of the holders of at least 60% of the outstanding shares of Series B or (ii) the closing of a firmly underwritten public offering in which the price per share is at least five times the Series B purchase price of $2.00 per share, as adjusted for stock dividends, combinations, splits, and recapitalizations; the aggregate net cash proceeds to the Company from the offering are at least $40,000,000; and the common stock is listed on the New York Stock or NASDAQ Exchanges.

The holders of Series A have voting rights equal to the number of shares of common stock into which the holders' shares could be converted, and vote together with all other classes of stock as a single class. The holders of Series A are entitled to receive dividends at an annual rate of 8%, when and if declared by the Company's board of directors. No dividends have been declared through December 31, 2006.

In the event of liquidation, dissolution, or winding up of the Company, each holder of Series A would be entitled to receive $2.00 per share, as adjusted pursuant to the terms of the Series A, plus

(Continued)

any declared but unpaid dividends on the Series A after payment of the Series B liquidation preference. As of December 31, 2006, the liquidation value of the Series A was $1,484,000.

(b) Series B Redeemable Convertible Preferred Stock

Between September and December 2004, the Company sold 4,101,750 shares of Series B at $2.00 per share, and warrants to purchase 512,719 shares of common stock at $0.01 per share, for an aggregate purchase price of $8,203,500. The fair value of the warrants was estimated on the date of grant using the Black-Scholes option pricing model. The Company allocated $97,417 of the proceeds to the warrants, based on the relative fair values of the Series B shares and warrants.

In 2004, the Company issued 100,000 shares of Series B, warrants to purchase 12,500 shares of common stock at $0.20 per share (note 7), options to purchase 43,500 shares of common stock at $0.20 per share, and options to purchase 141,000 shares of Series B at $1.65 per share to its president and CEO to satisfy outstanding obligations of the Company related to services provided under the president's employment agreement. The Company recorded the 100,000 shares of Series B at an aggregate $200,000 and valued the warrants and options at an aggregate $137,600.

Between May and July 2005, the Company sold 4,101,750 shares of Series B at $2.00 per share, and warrants to purchase 512,719 shares of common stock at $0.01 per share, for an aggregate purchase price of $8,203,500. The fair value of the warrants was estimated on the date of grant using the Black-Scholes option pricing model. The Company allocated $97,417 of the proceeds to the warrants, based on the relative fair values of the Series B shares and warrants.

Series B is convertible at any time at the option of the holder into the number of shares of common stock obtained by dividing the original purchase price plus all accrued and unpaid dividends by the conversion price, as defined, subject to adjustment pursuant to the terms of the Series B. The Series B is to be automatically converted into common stock at any time upon the earlier of (i) the election of the holders of at least 60% of the outstanding shares of Series B or (ii) the closing of a firmly underwritten public offering in which the price per share is at least five times the Series B purchase price of $2.00 per share, as adjusted for stock dividends, combinations, splits, and recapitalizations; the aggregate net cash proceeds to the Company from the offering are at least $40,000,000; and the common stock is listed on the New York Stock or NASDAQ Exchanges.

The holders of Series B have voting rights equal to the number of shares of common stock into which the holders' shares could be converted and vote together with all other classes of stock as a single class. In addition to general matters requiring stockholder vote, a vote of at least 60% of the outstanding shares of Series B is required for certain events, as defined, including, but not limited to, changes to the rights, preferences, and privileges of the Series B stockholders; payment of dividends; incurrence of any liability other than ordinary course trade payables in excess of $50,000; and capital purchases in excess of $50,000. The holders of Series B are entitled to receive cumulative dividends at an annual rate of 8%, compounded each calendar quarter. Such dividends accrue from the date of issuance, whether or not earned or declared. If not declared and paid, then accrued dividends are to be paid upon the earlier of a liquidation event, as defined, or upon redemption of the Series B. As of December 31, 2006 and 2005, cumulative but undeclared dividends payable upon redemption were $2,877,614 and $1,319,531, respectively.

(Continued)

In the event of liquidation, dissolution, or winding up of the Company, each holder of Series B would be entitled to receive $4.00 per share (two times the original purchase price), as adjusted pursuant to the terms of Series B, plus all accrued and unpaid dividends and all declared but unpaid dividends on the Series B. As of December 31, 2006, the liquidation value of the Series B was $38,148,330.

At the earlier of September 24, 2009 or ten days after the occurrence of any uncured breach, the Company shall redeem the Series B by paying in cash an amount per share of Series B equal to the redemption price. The redemption price is, for each share of Series B, the sum of (i) $4.00, as adjusted for any stock dividends, combinations, splits, and recapitalizations, plus (ii) all accrued and unpaid dividends. During the years ended December 31, 2005 and 2004, the Company incurred third-party costs of $60,342 and $219,072, respectively, in connection with the sale of Series B. These third-party costs reduced the carrying value of Series B. As a result of the Series B redemption feature, the carrying value of Series B will be accreted to its redemption value through September 24, 2009. The accretion of the redemption premium above the original issue price during the years ended December 31, 2006, 2005 and 2004 was $3,256,389, $2,155,606 and $355,066 respectively, and $5,767,061 for the period from March 27, 2003 (inception) to December 31, 2006. The accretion of third-party costs and warrants issued in connection with the Series B during the years ended December 31, 2006, 2005 and 2004 was $91,862, $75,928 and $16,054, respectively, and $183,844 for the period from March 27, 2003 (inception) to December 31, 2006.

(7) Stock Options and Warrants

(a) Common Stock Options

The Company's 2003 Equity Incentive Plan, as amended (the 2003 Plan), allows the granting of incentive and nonqualified stock options and issuance of common stock to employees, directors, consultants, and contractors to purchase an aggregate of 2,050,000 shares of the Company's common stock. The options are exercisable generally for a period of ten years from the date of grant and vest over terms ranging from immediately to four years. As of December 31, 2006, 288,211 shares remained reserved for grants under the 2003 Plan.

In addition to options granted under the 2003 Plan, the Company has 181,600 outstanding nonqualified stock options to individuals for consulting and board services as of December 31, 2006. The exercise rights and vesting terms of these options are similar to those options granted under the 2003 Plan.

(Continued)

A summary of option activity from March 27, 2003 (inception) to December 31, 2006 is as follows:

	Number of options	Exercise price per share	Aggregated exercise price
Balance, March 27, 2003	—	$ —	—
Granted	255,150	1.35	344,453
Balance, December 31, 2003	255,150	1.35	344,453
Granted	823,983	0.20 — 1.65	534,459
Canceled	(16,667)	1.50	(25,000)
Canceled (related to repricing)	(504,233)	1.35 — 1.65	(742,265)
Balance, December 31, 2004	558,233	0.20	111,647
Granted	830,859	0.20 — 0.25	176,544
Canceled	(22,000)	0.20	(4,000)
Exercised	(17,555)	0.20	(3,511)
Balance, December 31, 2005	1,349,537	0.20 — 0.25	280,680
Granted	701,605	0.25 — 2.87	475,009
Canceled	(129,828)	0.20 — 0.25	(30,068)
Exercised	(11,695)	0.20 — 0.25	(2,402)
Balance, December 31, 2006	1,909,619	$0.20 — 2.87	723,219

In addition to options granted under the 2003 Plan, the Company issued 33,770 shares of common stock under the 2003 Plan at $1.50 to $1.65 per share for services.

(Continued)

The following table details additional information with regard to employee and nonemployee options as of December 31, 2006 and for the year then ended:

	Employee	Nonemployee	Total
As of December 31, 2006:			
Outstanding options:			
Options	1,548,497	361,122	1,909,619
Weighted average exercise price	$ 0.40	0.29	0.38
Weighted average remaining contractual term	8.60 years	8.35 years	8.55 years
Aggregate intrinsic value	$3,825,578	932,211	4,757,789
Exercisable options:			
Options	691,108	260,745	951,853
Weighted average exercise price	$ 0.21	0.21	0.21
Weighted average remaining contractual term	3.50 years	3.39 years	3.33 years
Aggregate intrinsic value	$1,835,704	777,847	2,528,944
Nonvested options (granted on or after January 1, 2006):			
Options	501,443	55,778	557,221
Weighted average grant date fair value	$ 0.66	0.67	0.66
For the year ended December 31, 2006:			
Weighted average grant date fair value of options granted	$ 0.62	0.58	0.62
SFAS No. 123(R) expense	$ 52,036	75,726	127,762
APB No. 25 option expense	$ 790,069	—	790,069

At December 31, 2006, there was $305,033 of total unrecognized compensation expense, net of expected forfeitures, related to nonvested share-based compensation arrangements granted and accounted for under the provisions of SFAS No. 123(R). The expense is expected to be recognized over a weighted average period of 3.05 years. At December 31, 2006, there was $386,716 of unrecognized compensation expense related to unamortized intrinsic value for share-based compensation awards accounted for under the provisions of APB No. 25, which will be recognized over a weighted average period of 1.83 years.

(Continued)

The fair value of each employee option award granted after the adoption of SFAS No. 123(R) and each nonemployee award granted is estimated on the date of grant using the Black-Scholes option pricing model and assumptions noted in the following table:

	Year ended December 31, 2006		Year ended December 31, 2005
	Nonemployee options	Employee options	Nonemployee options
Expected life	10 years	5 to 6 years	10 years
Expected volatility	80%	80%	80%
Risk-free interest rate	4.58% to 4.98%	4.31% to 4.99%	4.10% to 4.58%
Dividend yield	0%	0%	0%

The expected life of the employee options was calculated using the shortcut method allowed by the provisions of SFAS No. 123(R). The expected volatility is estimated by the Company utilizing volatility statistics from peer groups. The risk-free interest rate is based on the continuous rates provided by the U.S. Treasury, with a term approximating the expected life of the option. The dividend yield is based on the projected annual dividend payment per share. The Company has not paid any dividends nor does it expect to in the future.

In 2006, the Company extended the contractual life of 73,373 employee option awards granted prior to January 1, 2006. As a result of that modification, the Company recorded expense of $10,379 based on the fair value of the award on the date of modification calculated using the Black-Scholes option pricing model.

During 2006, 2005 and 2004, the Company issued 101,300, 115,172 and 131,750 options, respectively, to nonemployee consultants to purchase common stock, which includes the options granted outside of the 2003 Plan. The fair value of the options was determined using the Black-Scholes option pricing model. The fair value of the nonemployee options issued during 2006, 2005 and 2004 was $69,197, $19,700 and $140,800, respectively, which was charged to expense upon grant as the options were 100% vested.

The Company repriced 139,900 nonemployee consultant options in November 2004 at $0.20 per share and recorded a compensation charge of $7,417 for the year ended December 31, 2004.

The Company repriced 364,333 employee options in November 2004 at $0.20 per share. The amount of compensation expense for the repriced employee option grants is subject to change each reporting period, based upon the difference between the exercise price and the fair value of the Company’s common stock on each reporting period, until the settlement of the option.

In connection with the grant and repricing of options to employees, the Company recorded deferred stock compensation of $17,592 and $5,225 for 2005 and 2004, respectively, and $54,767 from March 27, 2003 (inception) to December 31, 2005, representing the difference between the exercise price and the fair value of the Company’s common stock on the date such options were granted or

(Continued)

each balance sheet date for the repriced options. Through December 31, 2005, deferred compensation was included as a component of stockholders' equity (deficit) and was amortized to expense ratably over the vesting period of each option grant. Amortization expense for the years ended December 31, 2005 and 2004 was $19,580 and $12,589, respectively, and $32,997 from March 27, 2003 (inception) to December 31, 2005. Upon adoption of SFAS No. 123(R), on January 1, 2006, deferred compensation was eliminated against additional paid-in capital and option expense related to unamortized intrinsic value of APB Opinion No. 25 options and related compensation expense for the remeasurement of repriced options is charged to expense and additional paid-in capital as amortized. Compensation expense for the year ended December 31, 2006 was $223,595 for amortization of APB Opinion No. 25 intrinsic value and $604,460 for amortization of compensation related to repriced options subject to APB Opinion No. 25.

(b) Series B Preferred Stock Options

In September 2004, the Company issued options to purchase 141,000 shares of Series B at $1.65 per share to its president and CEO (note 6). The options are nonqualified options and were fully vested as of December 31, 2005.

(c) Warrants

The Company issued warrants in 2006 to a consultant to purchase 30,000 shares of common stock at $0.01 per share. The warrants were valued at $10,200 and were expensed as they were immediately vested.

In 2005, in connection with the issuance of the term loan, the Company issued warrants to purchase 25,000 shares at common stock at an exercise price of $0.01 per share, exercisable through September 2015 (note 5).

In 2005, in connection with the Series B financing, the Company issued warrants to purchase 512,719 shares of common stock at an exercise price of $0.01 per share, exercisable through July 1, 2015 (note 6).

In 2004, in connection with the Series B financing, the Company issued warrants to purchase 512,719 shares of common stock at an exercise price of $0.01 per share, exercisable through September 24, 2014 (note 6).

In connection with the Series B financing, the Company issued warrants in 2005 and 2004 to purchase a total of 30,000 shares of common stock at an exercise price of $2.00 per share, exercisable for 10 years, in consideration for consulting services relating to the sale of the Company's Series B (note 6). The value of the warrants granted was $1,650 using the Black-Scholes options pricing model, with the following assumptions: volatility of 80%, risk-free interest rate of 4%, dividend yield of 0%, and an expected life of 10 years.

(Continued)

In connection with the issuance of the Notes from March to June 2004, the Company issued warrants to purchase 155,300 shares of common stock at an exercise price of $0.01 per share, exercisable through September 24, 2014 (note 5). During 2006, 77,650 warrants were exercised for proceeds of $777.

In connection with the satisfaction of outstanding obligations to the Company's president and CEO under an employment agreement, the Company issued warrants to purchase 12,500 shares of common stock at an exercise price of $0.20 per share in 2004, exercisable through September 24, 2014 (note 6).

All 1,200,588 warrants outstanding as of December 31, 2006 are exercisable.

(8) Income Taxes

There is no provision for or benefit from income taxes for the period from March 27, 2003 (inception) to December 31, 2006, as the Company incurred losses for the period for income tax purposes. As of December 31, 2006, the Company has federal net operating loss carryforwards of approximately $11,300,000 that begin to expire in 2023 and state net operating loss carryforwards of approximately $11,300,000 that begin to expire in 2023. Pursuant to the *Internal Revenue Code*, the annual utilization of the federal carryforwards may be limited in terms of utilization in certain circumstances, including a change in ownership of the Company, as defined. In the case of Pennsylvania state loss carryforwards, there is a $3,000,000 limit on utilization per year. The Company also has research and development credit carryforwards of $473,000 that begin to expire in 2023. The Company will not recognize a tax benefit for financial reporting purposes for any previously incurred or future operating losses or credit carryforwards, until such time as management believes it is more likely than not that the Company's future operations will generate sufficient taxable income to be able to realize such benefits.

Deferred income taxes are recorded for the tax effects of temporary differences between the basis of assets and liabilities recognized for financial reporting purposes and the tax basis, and net operating losses and credits. The most significant component of the Company's net deferred tax assets as of December 31, 2006 are net operating loss carryforwards and capitalized research and development costs. A full valuation allowance was established for the deferred tax assets, as realization of the tax benefits is not assured.

(9) Commitments and Contingencies

(a) Leases

The Company leases laboratory equipment under an operating lease that commenced in June 2004 and expires in May 2007. Rent expense under this operating lease was $14,222, $14,222 and $8,269 for the years ended December 31, 2006, 2005 and 2004, respectively. Future minimum lease payments as of December 31, 2006 are $5,953 for the year ending December 31, 2007.

(b) License and Research Agreements

In March 2003, the Company and the University of Pennsylvania entered into two exclusive worldwide licenses for certain technology rights. The Company issued 408,334 shares of common stock valued at $612,501 in exchange for licenses of certain patent rights. The Company recorded the

(Continued)

license fee as research and development expense, as the licensed technology had not reached technological feasibility and had no alternative future uses. Additional license fees of up to $950,000 are required upon the completion of three separate milestones, as defined. The agreement also provides for royalty payments equal to various percentages of future commercial sales of products manufactured using the licensed technology, as defined, if any, through the later of the expiration of the licensed patent or ten years after the first commercial sale of the licensed product. As of December 31, 2006, no milestones were achieved and no royalties have been paid to the University of Pennsylvania.

In February 2005, the Company and Intradigm Corporation (Intradigm), a RNAi delivery technology company, entered into a license and collaboration agreement for the license of certain patents and the development of a siRNA delivery system for the posterior pole of the eye. The Company issued 250,000 shares of common stock at $0.20 per share to Intradigm at execution of the agreement. The shares were valued at $50,000 at date of grant and expensed in 2005. The shares are restricted and vest as specific milestones, as defined, are achieved. As of December 31, 2006, Intradigm has vested in 25,000 shares. The Company expensed and paid $500,000 in 2005 related to the license agreement, and is required to pay royalties, equal to various percentages, on future sales, if any, of products manufactured using the licensed technology. The collaboration agreement calls for payments upon the achievement of certain milestones, if any, up to $5,100,000 for the development and commercialization of a siRNA therapeutic. In addition to the milestone payments, the Company is required to pay Intradigm $15,000 per month for each full-time equivalent employee that Intradigm has provided related to the work being performed under the collaboration agreement. The Company expensed $89,169 and $134,500 in 2006 and 2005, respectively, related to these services. As of December 31, 2006, no milestones were achieved and no royalties have been paid to Intradigm.

In April 2006, the Company entered into a license agreement with Pathogenics, Inc. (Pathogenics) for N-Chlorotaurine (NCT) and licensed products, as defined, for the treatment of ophthalmic disease or infection in any territory. The Company was also granted non-exclusive rights to all data resulting from a phase I clinical trial with NCT in Austria. The Company is obligated to pay to Pathogenics certain milestone payments totaling up to $6,325,000 upon the achievement of specified milestones and royalty payments of 6% on all net sales, if any, of licensed products. The Company is also obligated to pay Pathogenics an annual minimum payment if the total payments made for such year are less than a specified minimum amount. The minimum payments due are $50,000 for 2007; $100,000 for 2008, 2009, and 2010; $200,000 for 2011 and 2012; and $1,500,000 for 2013. Additionally, the Company must have funds of up to $75,000 available to accelerate a certain milestone, as defined. The term of the agreement is for the shorter of twenty years or the last to expire of the Pathogenics patent rights. The Company expensed and paid $153,830 in 2006 related to this license agreement. As of December 31, 2006, no milestones were achieved and no royalties have been paid to Pathogenics.

In June 2006, the Company entered into a material transfer agreement with ZaBeCor Pharmaceutical Company, LLC (ZaBeCor) under which ZaBeCor provided the Company with instructions to make a certain siRNA-derived therapeutic with the right to evaluate the potential use of the siRNA-derived therapeutic for the treatment of ophthalmic diseases in humans for the period of one year. The

(Continued)

Company was granted an option to acquire an exclusive license to certain of ZaBeCor's patents related to the siRNA-derived therapeutic for the therapy of ophthalmic diseases in humans. The term of the option to license is for one year from the date of the material transfer agreement. The license agreement, if opted, provides for royalty payments equal to various percentages of future net sales, as defined, if any. The license agreement also provides for payments in cash and common stock of the Company upon the achievement of specified milestones, if any, up to $10,950,000 and 400,000 in cash and common stock, respectively. The Company expensed and paid $50,000 in 2006 related to this material transfer agreement. As of December 31, 2006, the Company has not exercised the option to license, and as such, no milestones were achieved and no royalties have been paid to ZaBeCor.

In August 2006, the Company entered into a license agreement with the Board of Trustees of the University of Illinois (UIC) for the license of certain inventions, patents, and technological information related to Ophthalmic siRNA targeting TGF-â for the inhibition and treatment of ophthalmic disease. The agreement provides for payments upon the achievement of specified milestones, if any, up to $2,450,000 and royalty payments of either 1.5% or 3.0%, as defined, on all net sales, as defined, of licensed products. Additional license fees of $25,000, $50,000, and $100,000 are due in connection with the first and second, third and fourth, and fifth and subsequent anniversaries of the license agreement, respectively, with an annual minimum royalty of $400,000 on net sales, if any. The Company expensed and paid $50,947 in 2006 related to this license agreement. As of December 31, 2006, no milestones were achieved and no royalties have been paid to UIC.

(c) Manufacturing Supply Agreement

The Company and Avecia BioTechnology, Inc. (Avecia) had entered into a long-term supply agreement in September 2004. Avecia has been unable to produce product for the Company pursuant to this agreement. During 2006, the Company notified Avecia that the agreement is terminated as a result of this failure to produce product. The Company and Avecia are currently in negotiations with regard to the legal termination of the agreement. The Company does not believe that there are any future commitments under this agreement and will recognize return of payments made under the agreement, if any, when settlement is reached.

(d) Employment Agreements

The Company has employment agreements with certain officers and key employees that provide for, among other things, salary, performance incentive bonuses, severance, and change in control provisions.

(e) Contingencies

The Company may be involved from time to time in certain legal actions arising in the ordinary course of business. Management believes, based on the advice of outside legal counsel, that the outcome of such actions will not have a material adverse effect on the Company's financial position or results of operations.

(Continued)

(10) Employee Benefit Plans

During the year ended December 31, 2005, the Company adopted a 401(k) retirement plan (the 401(k) plan). The 401(k) plan allows eligible employees to contribute a portion of their salary on a pretax basis, subject to annual limits. The Company may make discretionary matching contributions to the plan as determined by the board of directors. For the years ended December 31, 2006 and 2005, there were no discretionary matching contributions approved by the board of directors.

(11) Supplemental Cash Flow Information

Supplemental cash flow information is summarized as follows:

	Year ended December 31			Period from March 27, 2003 (inception) to December 31, 2006
	2006	2005	2004	
Interest paid	$490,920	145,401	—	636,321
Noncash financing and investing activities:				
Warrants issued with debt	$ —	312,514	203,258	515,772
Beneficial conversion feature on convertible notes payable	—	—	203,258	203,258
Conversion of notes payable to equity	—	—	1,025,357	1,028,357

(12) Subsequent Event

On January 11, 2007, the Company entered into an agreement with the Froptix Corporation (Froptix) and The Frost Group, LLC (Frost Group) whereby the Frost Group provided a subordinated secured line of credit, up to $8,000,000 to the Company; the Company will merge with and into a wholly-owned subsidiary of a publicly traded “shell” company (Public Shell) controlled by the Frost Group and certain affiliates and associates of the Frost Group; and Froptix will also merge with and into a wholly-owned subsidiary of the Public Shell.

In exchange for entering into this agreement, the Company agreed to grant to the Frost Group a warrant to purchase up to 125,000 shares of Acuity Series B Preferred Stock, par value $0.01 per share, for an exercise price of $2.00 per share and a warrant to purchase up to 15,625 shares of Acuity Common Stock, par value $0.01 per share for an exercise price of $0.01 per share. The holders of the Series A and Series B Preferred Stock agreed to waive all redemption and liquidation rights as of December 14, 2006.

On March 27, 2007, the Company, Froptix, and eXegenics, Inc., the Public Shell, executed a merger agreement that brought the three companies under one corporate umbrella. The combined company was re-named Opko Corporation. As part of the transaction, the Frost Group agreed to increase the line of credit to $12,000,000.

eXegenics, Inc.
A DEVELOPMENT STAGE COMPANY

UNAUDITED PRO FORMA
CONDENSED CONSOLIDATED
FINANCIAL STATEMENTS

The following Unaudited Pro Forma Condensed Consolidated Balance Sheet combines the historical condensed consolidated balance sheets of eXegenics, Froptix and Acuity as of December 31, 2006 giving effect to the merger as if it had occurred on December 31, 2006. The Unaudited Pro Forma Condensed Consolidated Statement of Operations combines the historical condensed consolidated statements of operations of eXegenics, Froptix and Acuity giving effect to the merger as if it had occurred on January 1, 2006. These Pro Forma statements are presented for illustrative purposes only. The Pro Forma adjustments are based upon available information and assumptions that management believes are reasonable. The Unaudited Pro Forma Condensed Consolidated Financial Statements do not purport to project the future financial position or operating results of the merged company. The acquisition of Froptix and Acuity is viewed to have taken place in a three step transaction.

The first step is the purchase of 19.4 million shares for a 51% interest in eXegenics in February 2007 by a group of investors led by Dr. Phillip Frost. This purchase created common control between eXegenics and Froptix as investors included in the group led by Dr. Phillip Frost own 91% of Froptix. The second step is Froptix acquiring eXegenics. This step has been accounted for as a reverse acquisition under the purchase method of accounting. The combination of these two companies is recorded as a recapitalization of eXegenics. The third step is eXegenics and Froptix, being under common control, acquiring Acuity in a purchase business combination. The first column of pro forma adjustments reflects the acquisition of shares in February 2007 by the group of investors. The second column of pro forma adjustments reflects the second step, the recapitalization. The third column of pro forma adjustments reflects the third step, purchase price allocation of Acuity.

These Unaudited Pro Forma Condensed Consolidated Financial Statements do not give effect to any restructuring costs or to any potential cost savings or other operating efficiencies that could result from the merger between eXegenics, Froptix and Acuity.

You should read this information in conjunction with the accompanying notes to the Unaudited Pro Forma Condensed Consolidated Financial Statements; the separate historical consolidated financial statements of eXegenics contained in this Current Report on Form 8-K previously filed with the Securities and Exchange Commission.

eXegenics, Inc.
A DEVELOPMENT STAGE COMPANY
UNAUDITED PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEET

(in thousands, except share and per share information)

AS OF DECEMBER 31, 2006	eXegenics	*Frost Group purchase of interest in eXegenics, February 2007* Pro Forma Adjustments	Froptix	*Froptix reverse acquisition of eXegenics* Pro Forma Adjustments	*Froptix/ eXegenics pro forma* Subtotal	Acuity	*Froptix/ eXegenics acquisition of Acuity* Pro Forma Adjustments	Pro Forma Consolidated
ASSETS								
Current assets:								
Cash and cash equivalents	$ 8,596	$ 8,024a	$ 116	$ 0	$ 16,736	$ 210	$ 0	$ 16,946
Short-term investments	0	0	0	0	0	639	0	639
Prepaid expenses and other current assets	156	0	0	0	156	18	0	174
Total Current Assets	8,752	8,024	116	0	16,892	867	0	17,759
Property and equipment, net	0	0	0	0	0	90	0	90
Deferred financing costs	0	0	0	0	0	24	0	24
Total Assets	$ 8,752	$ 8,024	$ 116	$ 0	$ 16,892	$ 981	$ 0	$ 17,873
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)								
Current liabilities:								
Current portion of long-term notes payable	$ 0	$ 0	$ 0	$ 0	$ 0	$ 1,667	$ 0	$ 1,667
Accounts payable	7	0	95	0	102	3,136	0	3,238
Accrued compensation	0	0	0	0	0	299	0	299
Accrued expenses	667	0	0	0	667	407	16,673i	17,747
Total current liabilities	674	0	95	0	769	5,509	16,673	22,951
Long-term notes payable, net of unamortized warrant discount of $168 at December 31, 2006	0	0	0	0	0	2,165	0	2,165
Total Liabilities	674	0	95	0	769	7,674	16,673	25,116
Commitments and contingencies								
Series B Redeemable Convertible Preferred Stock, $0.01 par value; authorized 13,255,179 shares; issued and outstanding 8,817,679 shares at December 31, 2006. (Liquidation value of $38,148,330 at December 31, 2006); none on a pro forma basis	0	0	0	0	0	25,988	(25,988)e	0
Total Series B Redeemable Convertible Preferred Stock	0	0	0	0	0	25,988	(25,988)	0
Stockholders' equity (deficit):								
Series A Convertible Preferred Stock, $0.01 par value; authorized issued and outstanding 742,000 shares at December 31, 2006 (Liquidation value of $1,484,000 at December 31, 2006); none on a pro forma basis	0	0	0	0	0	7	(7)e	0
Series A Preferred Stock, $0.01 par value, authorized 10,000,000 shares; issued and outstanding 1,002,017 at December 31, 2006; and on a pro forma basis	10	0	0	0	10	0	0	10
Series B Junior Participating Preferred Stock, $0.01 par value; 30,000 designated ; none outstanding at December 31, 2006 or on a pro forma basis	0	0	0	0	0	0	0	0
Series C Preferred Stock, $0.01								

par value, authorized 500,000 shares; issued and outstanding 952,839 at December 31, 2006; 457,589 on a pro forma basis	0	0	0	0	0	0	5d	5
Common stock, $0.01 par value; authorized 19,584,956 shares; issued and outstanding 2,116,877 shares at December 31, 2006 none on a pro forma basis	0	0	0	0	0	21	(21)e	0
Common stock, $0.01 par value; authorized 225,000,000; issued and outstanding 16,990,991 shares issued and outstanding at December 31, 2006 113,116,299 on a pro forma basis	170	194a	0	618b	982	0	148d	1,130
Additional paid-in capital	68,285	7,830a	898	(61,005)b	16,008	0	189,481dei	205,489
Deficit accumulated during development stage	(57,050)	0	(877)	57,050c	(877)	(32,709)	32,709f	(213,877)
							(213,000)g	
Less: Treasury Stock of 611,200, at cost	(3,337)	0	0	3,337c	0	0	0	0
Total Stockholders' equity (deficit)	8,078	8,024	21	0	16,123	(32,681)	9,315	(7,243)
Total Liabilities and Stockholders' equity (deficit)	$ 8,752	$ 8,024	$ 116	$ 0	$ 16,892	$ 981	$ 0	$ 17,873

See accompanying notes to unaudited Pro Forma Condensed Consolidated Financial Statements.

eXegenics, Inc.
A DEVELOPMENT STAGE COMPANY
UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

FOR THE YEAR ENDED DECEMBER 31, 2006
(in thousands, except per share information)

	eXegenics	Froptix	Acuity	Pro Forma Adjustments	Pro Forma Consolidated
Revenues Operating expenses:					
Research and development	$ 0	$ 508	$ 8,027	$ 0	$ 8,535
General and administrative	1,117	375	2,698	0	4,190
Write off of in process research and development	0	0	0	0g	0
Operating loss	(1,117)	(883)	(10,725)	0	(12,725)
Interest income	469	6	252	0	727
Interest expense	0	0	(619)	0	(619)
Total interest income (expense)	469	6	(367)	0	108
Income taxes	0	0	0	0	0
Net loss	(648)	(877)	(11,092)	—	(12,617)
Preferred stock dividend	(238)	0	0	(705)h	(943)
Net loss attributable to common shareholders	$ (886)	$ (877)	$(11,092)	$ (705)	$ (13,560)
Weighted average number of shares	16,369				113,042j
Diluted loss per share	$ (0.05)				$ (0.12)

See accompanying notes to unaudited Pro Forma Condensed Consolidated Financial Statements.

Notes to Unaudited Pro Forma Condensed Consolidated Financial Statements

a Cash raised through the sale of additional shares of eXegenics largely to a group of investors lead by Dr. Phillip Frost in February, 2007 for approximately $0.44 per share reduced by a subsequent purchase price adjustment of $588,947.

b The issuance of 61,775,000 shares of common stock for 100% of the outstanding shares of Froptix.

c Eliminate eXegenics retained deficit and treasury stock.

d Represents eXegenics shares issued and options/warrants granted (including their corresponding fair values) in exchange for 100% ownership in Acuity as follows:

	Shares Issued/Grants Received	Fair Value Received
Common Stock	14,835,930	$ 39,315,215
Series C Preferred Stock, if converted	45,758,686	$ 121,260,518
Series C Preferred Stock Options, if converted	731,700	$ 1,763,397
Series C Preferred Stock Warrants, if converted	1,686,600	$ 4,047,840
Replacement warrants for Acuity warrants	6,472,636	$ 16,311,048
New warrants issued	6,253,239	$ 14,444,983
Vested common stock options	6,428,266	$ 15,739,231
Total		$ 212,882,232

e Eliminate Froptix common stock and Acuity common and preferred stock.

f Eliminate Acuity retained deficit.

g Represents write off of in process research and development of Acuity (approximately $213,000,000 — see note d). Amount was valued at consummation of the acquisition but then subsequently written off in accordance with FASB Interpretation No. 4, *Applicability of FASB Statement No. 2 to Business Combinations Accounted for by the Purchase Method.* Note this amount is not included in the accompanying pro forma condensed consolidated statement of operations.

h Represents dividends which would have been paid to Acuity preferred stock holders had the merger occurred January 1, 2006. Amount calculated as 457,589 Series C Preferred Stock shares multiplied by a fair value of $77/share multiplied by 2% dividend rate (457,589*$77*2%=$704,687).

i Represents liability ($16,673,275) associated with equity instruments (options and warrants) issued to individuals other than employees. In accordance with EITF 00-19 the fair value of these instruments has been recorded as a liability with a corresponding offset to additional paid in capital.

j Represents weighted average number of shares as follows:

	Shares Outstanding
eXegenics shares outstanding at December 31, 2006	16,990,991
Issuance of shares on February 8, 2007 to a group of investors led by Dr. Phillip Frost	19,440,491
Issuance of shares on March 27, 2007 to Froptix shareholders upon converting Froptix shares to eXegenics shares	61,775,000
Issuance of shares on March 27, 2007 to Acuity shareholders upon converting Acuity shares to eXegenics shares	14,835,930
Total	113,042,412

Note: **The allocation of purchase price is preliminary and may change significantly. The stock price of eXegenics leading up to the closing of the merger increased significantly, resulting in a much higher valuation of Acuity in purchase accounting than was contemplated in the negotiations between the parties to the merger.**

(d) Exhibits

Exhibit Number	Description
2.1	Merger Agreement and Plan of Reorganization
3.2*	Series C Certificate of Designation
4.1	Form of Common Stock Warrant
4.2	Form of Preferred Stock Warrant
10.1	Form of Lockup Agreement
10.2	Credit Agreement, dated as of March 27, 2007, by and among eXegenics Inc., The Frost Group, LLC, and Acuity Pharmaceuticals, LLC
10.3	Amended and Restated Venture Loan and Security Agreement, dated as March 27, 2007, by and among Horizon Technology Funding Company LLC, Acuity Pharmaceuticals, LLC and eXegenics, Inc.
10.4*	Research Agreement, dated April 7, 2006, between Froptix Corporation and the University of Florida Board of Trustees
10.5*	Standard Exclusive License Agreement, dated as April 18, 2006, by and between University of Florida Research Foundation, Inc. and Froptix Corporation
10.6*	Standard Exclusive License Agreement, dated as April 18, 2006, by and between University of Florida Research Foundation, Inc. and Froptix Corporation
10.7*	Standard Exclusive License Agreement, dated as April 18, 2006, by and between University of Florida Research Foundation, Inc. and Froptix Corporation
10.8	Technology License Agreement, dated August 3, 2006, between the Board of Trustees of the University of Illinois and Acuity Pharmaceuticals, Inc.
10.9	License Agreement, dated April 13, 2006, by and between Acuity Pharmaceuticals, Inc. and Pathogenics, Inc.
10.10	Amendment No. 1 to Agreement, dated August 2, 2006, by and between Acuity Pharmaceuticals, Inc. and Pathogenics, Inc.
10.11	Amendment No. 2 to Agreement, dated March 8, 2007, by and between Acuity Pharmaceuticals, Inc. and Pathogenics, Inc.
10.12	License and Collaboration Agreement, dated as of June 2, 2005, by and between Acuity Pharmaceuticals, Inc. and Intradigm Corporation
10.13	License Agreement, dated as March 31, 2003, by and between the Trustees of the University of Pennsylvania and Acuity Pharmaceuticals, Inc. (Reich/Tolentinio)
10.14	License Agreement, dated as March 31, 2003, by and between the Trustees of the University of Pennsylvania and Acuity Pharmaceuticals, Inc. (Reich/Gewirtz)
10.15	First Amendment to License Agreement, dated as August 1, 2003, by and between the Trustees of the University of Pennsylvania and Acuity Pharmaceuticals, Inc. (Reich/Tolentinio)
10.16	First Amendment to License Agreement, dated as August 1, 2003, by and between the Trustees of the University of Pennsylvania and Acuity Pharmaceuticals, Inc. (Gewirtz)
10.17	Amended and Restated Subordination Agreement, dated as of March 27, 2007, by and among The Frost Group, LLC, Horizon Technology Funding Company LLC, Acuity Pharmaceuticals, LLC, and eXegenics Inc.

Exhibit Number	Description
10.18	Employment letter dated March 29, 2007, between Samuel J. Reich and eXegenics Inc.
10.19	Employment Agreement, dated as of September 25, 2004, by and between Dale R. Pfost and Acuity Pharmaceuticals, Inc.
99.1	Press Release, dated March 27, 2007

* To be filed by amendment

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

eXegenics Inc.

By: /s/ Dale R. Pfost
Name: Dale R. Pfost
Title: President

Date March 30, 2007

EXHIBIT 2.1

MERGER AGREEMENT AND PLAN OF REORGANIZATION

THIS MERGER AGREEMENT AND PLAN OF REORGANIZATION (this "***Agreement"***), dated as of March 27, 2007, is entered into by and among Acuity Pharmaceuticals, Inc., a Delaware corporation ("***Acuity"***), Froptix Corporation, a Florida corporation ("***Froptix"***), eXegenics Inc. a Delaware corporation ("***Parent"***), e-Acquisition Company I-A, LLC, a Delaware limited liability company, which is a wholly owned subsidiary of Parent ("***Merger Sub I"***) and e-Acquisition Company II-B, LLC, a Delaware limited liability company which is a wholly owned subsidiary of Parent ("***Merger Sub II"***).

WHEREAS, the Boards of Directors and/or members, as applicable, of each of Parent, Merger Sub I, Merger Sub II, Acuity and Froptix have, pursuant to the Laws of their respective States of incorporation or organization, approved this Agreement and the consummation of the transactions contemplated hereby, including (i) the merger of Froptix with and into Merger Sub I (the "***Froptix Merger"***), and (ii) the merger of Acuity with and into Merger Sub II (the "***Acuity Merger"*** and, with the Froptix Merger, the "***Mergers"***);

WHEREAS, the Boards of Directors and/or members, as applicable, of each of Parent, Merger Sub I, Merger Sub II, Acuity and Froptix have declared that this Agreement is advisable, fair and in the best interests of their respective shareholders, as applicable, and approved the Mergers, respectively, upon the terms and conditions set forth in this Agreement; and

WHEREAS, the parties to this Agreement intend that the Mergers will qualify as a reorganization pursuant to Internal Revenue Code of 1986, as amended (the "***Code"***) Section 368(a)(1)(A), and the parties have agreed not take actions that would cause the Mergers not to qualify as such a reorganization.

NOW, **THEREFORE**, in consideration of the covenants, promises and representations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly and mutually acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Unless the context otherwise requires, the terms defined in this Article I shall have the meanings herein specified for all purposes of this Agreement, applicable to both the singular and plural forms of any of the terms herein defined.

1.1 As used herein, the following terms shall have the following meanings:

"Acuity Common Stock" means the Common Stock of Acuity, par value $0.01 per share.

"Acuity Common Valuation" shall mean $5,475,111.

"Acuity Employee Benefit Plans" means all Employee Benefit Plans with respect to which Acuity or any ERISA Affiliate of Acuity has any obligation or liability, contingent or otherwise.

"Acuity Option Plans" means the Acuity Pharmaceuticals, Inc. 2003 Equity Incentive Plan, Amended and Restated as of November 8, 2004.

"Acuity Preferred Stock" means the Acuity Series A Preferred Stock and the Acuity Series B Preferred Stock.

"Acuity Series A Preferred Stock" means the Series A Preferred Stock of Acuity, par value $0.01 per share.

"Acuity Series A Valuation" shall mean $1,919,116.

"Acuity Series B Preferred Stock" means the Series B Preferred Stock of Acuity, par value $0.01 per share.

"Acuity Series B Valuation" shall mean $22,806,128.

"Acuity Shareholder" means any holder of Acuity Shares.

"Acuity Shares" means, collectively, all of the issued and outstanding shares of Acuity Common Stock, Acuity Series A Preferred Stock, and Acuity Series B Preferred Stock.

"Acuity Warrant Number" shall mean 0.0909507.

"Eligible Market" means the American Stock Exchange.

"Employee Benefit Plans" means (i) all "employee benefit plans" (as defined in Section 3(3) of ERISA), (ii) all employment, consulting, individual compensation and collective bargaining agreements and (iii) all other employee benefit plans, policies, agreements, or arrangements, including any bonus or other incentive compensation, stock purchase, equity or equity-based compensation, deferred compensation, change in control, termination, severance, sick leave, vacation, loans, perquisites, salary continuation, health, disability, life insurance and educational assistance plans, policies, agreements or arrangements.

"End Date" means August 30, 2007.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any entity (whether or not incorporated) which would be treated as a single employer with Acuity under Sections 414(b), (c), (m) or (o) of the Code and the regulations thereunder.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"FDA" means the U.S. Food and Drug Administration.

"Froptix Common Stock" means the Common Stock of Froptix, par value $0.01 per share.

"Froptix Shareholder" means any holder of Froptix Shares.

"Froptix Shares" means, collectively, all of the issued and outstanding shares of Froptix Common Stock.

"Froptix Valuation" shall mean $33,000,000.

"Froptix Warrant Number" shall mean 0.2530630.

"GAAP" means accounting principles generally accepted in the United States of America applied on a consistent basis throughout the periods indicated.

"Governmental Authority" means any foreign, federal, national, state or local judicial, legislative, executive or regulatory body, authority or instrumentality.

"Hazardous Substances" means any substance, waste, contaminant, pollutant or material that has been determined by any Governmental Authority to be capable of posing a risk of injury to health, safety, property or the environment.

"Holder" means the Trustees of the University of Pennsylvania and any of the holders of any Registrable Securities who is a party to the Acuity Lockup Agreements or Froptix Lockup Agreements .

"Indebtedness" of any Person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (other than trade payables entered into in the ordinary course of business), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with GAAP, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses

(A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness and (H) all guaranties in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above.

"Insolvent" means, with respect to any Person, (i) the present fair saleable value of such Person's assets is less than the amount required to pay such Person's total Indebtedness, (ii) such Person is unable to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured, (iii) such Person intends to incur or believes that it will incur debts that would be beyond its ability to pay as such debts mature or (iv) such Person has unreasonably small capital with which to conduct its business as such business is now conducted and is proposed to be conducted.

"Intellectual Property" means all trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, patents and patent rights, brand names, trade dress, product designs, product packaging, business and product names, logos, slogans, rights of publicity, trade secrets, inventions, formulae, industrial models, processes, designs, specifications, data, technology, methodologies, computer programs (including all source codes), any other confidential and proprietary right or information, whether or not subject to statutory registration, and all related technical information, manufacturing, engineering and technical drawings, know-how and all pending applications for and registrations of patents, trademarks, service marks and copyrights, and the right to sue for past infringement, if any, in connection with any of the foregoing, and all documents, disks and other media on which any of the foregoing is stored.

"Law" means any law, statute, rule, regulation, judgment, decree, order, ordinance, code, regulation, arbitration award, grant, franchise, permit and license or other legally enforceable requirement of or by any Governmental Authority.

"Letter of Transmittal" means a letter of transmittal in such form as reasonably presented to the Froptix Shareholders and the Acuity Shareholders by Parent a reasonable amount of time after to the Froptix Merger Effective Time and the Acuity Merger Effective Time, as applicable.

"Lien" means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind, including, without limitation, any conditional sale or other title retention agreement, any lease in the nature thereof and including any lien or charge arising by Law.

"Material Adverse Effect" means a material adverse effect on the operations, condition (financial or other), assets, liabilities, earnings, or business (as now conducted or as proposed to be conducted) of the Person affected or on the transactions contemplated hereby; *provided*, *however*, that (i) any adverse change or effect that is

demonstrated to be primarily caused by conditions affecting the United States economy generally shall not be taken into account in determining whether there has been or would be a "Material Adverse Effect" on or with respect to the Person affected, or (ii) any adverse change, event or effect that is demonstrated to be primarily caused by the announcement or pendency of the Mergers or of the transactions contemplated hereby shall not be taken into account in determining whether there has been or would be a "Material Adverse Effect" on or with respect to the Person affected.

"OTCBB" means the over-the-counter bulletin board market maintained by The Nasdaq Stock Market, Inc.

"Parent Common Stock" means the Common Stock of Parent, par value $0.01 per share.

"Parent Employee Benefit Plans" means all Employee Benefit Plans with respect to which Parent or any ERISA Affiliate of Parent has any obligation or liability, contingent or otherwise.

"Parent Per Share Stock Valuation" means the per share dollar amount equal to the quotient of the Parent Valuation divided by the number of shares of the capital stock of Parent (including options and warrants to purchase capital stock of Parent) outstanding immediately prior to the Froptix Merger Effective Time, calculated on a fully-diluted basis.

"Parent Preferred Stock" means the Parent Series A Preferred Stock and the Parent Series B Preferred Stock.

"Parent Series A Preferred Stock" means the Series A Preferred Stock of Parent, par value $0.01 per share.

"Parent Series B Preferred Stock" means the Series B Junior Participating Preferred Stock of Parent, par value $0.01 per share.

"Parent Series C Preferred Stock" means the Series C Preferred Stock of Parent, par value $0.01 per share, which will have the rights and preferences set forth in the Series C Preferred Certificate of Designation.

"Parent Valuation" shall mean $19,000,000.

"Person" means all natural persons, corporations, business trusts, associations, unincorporated organizations, limited liability companies, partnerships, joint ventures and other entities and Governmental Authorities or any department or agency thereof.

"Proceeding" means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened in writing.

"Registrable Securities" means all of (i) the shares of Parent Common Stock issued pursuant to this Agreement, (ii) the shares of Parent Common Stock issuable upon conversion of the shares of Parent Series C Preferred Stock issued pursuant to this Agreement, (iii) the shares of Parent Common Stock issuable upon exercise of the Parent Warrants issued pursuant to this Agreement or the Master Agreement and (iv) the shares of Parent Common Stock issuable upon exercise of the Adjusted Parent Options or Adjusted Parent Series C Options issued pursuant to this Agreement, together with any securities issued or issuable pursuant to the adjustment provisions set forth in the Parent Warrants or upon any stock split, dividend or other distribution, recapitalization, exchange or similar event with respect to the foregoing.

"SEC" means the U.S. Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended.

"Series C Certificate of Designation" means the Series C Certificate of Designation of Parent in substantially the form attached hereto as Exhibit E.

"Takeover Protections" shall mean any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under an entity's charter documents or the laws of its state of incorporation.

1.2 Each of the following additional terms is defined in the Section set forth opposite such term:

Term	**Section**
Acuity	Preamble
Acuity By-laws	Section 4.1
Acuity Certificate	Section 4.1
Acuity Certificate of Merger	Section 2.3(b)
Acuity Common Exchange Ratio	Section 3.3(a)
Acuity Common Options	Section 3.4(a)
Acuity Common Warrant	Section 3.5(a)
Acuity Dissenting Shares	Section 3.12
Acuity Financial Statements	Section 4.6
Acuity Indemnitees	Section 7.6(b)
Acuity Intellectual Property	Section 4.9
Acuity Lockup Agreements	Section 7.16(b)
Acuity Material Agreement	Section 4.8
Acuity Merger	Recitals
Acuity Merger Effective Time	Section 2.3(b)
Acuity Option	Section 3.4(b)
Acuity Preferred Option	Section 3.4(b)
Acuity Series A Preferred Exchange Ratio	Section 3.3(b)
Acuity Series B Preferred Exchange Ratio	Section 3.3(c)

Term	Section
Acuity Series B Preferred Warrant	Section 3.5(b)
Acuity Stock Certificate	Section 3.7
Adjusted Parent Option	Section 3.2(a)
Adjusted Parent Series C Option	Section 3.4(b)
Agreement	Preamble
Closing	Section 2.2
Closing Date	Section 2.2
Code	Recitals
Confidentiality Agreement	Section 7.11
DGCL	Section 2.1(b)
FBCA	Section 2.1(a)
Froptix	Preamble
Froptix Articles	Section 5.1
Froptix Articles of Merger	Section 2.3(a)
Froptix By-laws	Section 5.1
Froptix Certificate of Merger	Section 2.3(b)
Froptix Common Exchange Ratio	Section 3.1(a)
Froptix Financial Statements	Section 5.6.
Froptix Indemnitees	Section 7.6(a)
Froptix Intellectual Property	Section 5.9
Froptix Lockup Agreements	Section 7.16(a)
Froptix Material Agreement	Section 5.8
Froptix Merger	Recitals
Froptix Merger Effective Time	Section 2.3(a)
Froptix Option	Section 3.2(a)
Froptix Stock Certificate	Section 3.6
LLC Act	Section 2.1(a)
Master Agreement	Section 7.15
Merger Sub I	Preamble
Merger Sub I Certificate	Section 6.1
Merger Sub I LLC Agreement	Section 6.1
Merger Sub II	Preamble
Merger Sub II Certificate	Section 6.1
Merger Sub II LLC Agreement	Section 6.1
Mergers	Recitals
Parent	Preamble
Parent By-laws	Section 6.1
Parent Certificate	Section 6.1
Parent Material Agreement	Section 6.11
Parent Warrants	Section 3.1(a)
Permitted Liens	Section 4.10
SEC Reports	Section 6.7

Term	Section
Surviving Company I	Section 2.1(a)
Surviving Company II	Section 2.1(b)
Transaction Form 8-K	Section 7.3
Voting Agreement	Section 7.5

ARTICLE II
THE MERGERS

2.1 The Mergers.

(a) Froptix Merger. On the terms and subject to the conditions set forth in this Agreement, at the Froptix Merger Effective Time, in accordance with the terms of the Florida Business Corporation Act (the "***FBCA"***) and the Delaware Limited Liability Company Act (the ***"LLC Act"***), Froptix shall be merged with and into Merger Sub I. At the Froptix Merger Effective Time, the separate existence of Froptix shall cease and Merger Sub I shall continue as the surviving company ("***Surviving Company I"***).

(b) Acuity Merger. On the terms and subject to the conditions set forth in this Agreement, at the Acuity Merger Effective Time, which shall take place immediately after the effectiveness of the Froptix Merger, in accordance with the provisions of the Delaware General Corporation Law (the "***DGCL"***) and the LLC Act, Acuity shall be merged with and into Merger Sub II. At the Acuity Merger Effective Time, the separate existence of Acuity shall cease and Merger Sub II shall continue as the surviving company ("***Surviving Company II"***).

2.2 The Closing. The closing of the Froptix Merger and the Acuity Merger and the other transactions contemplated by this Agreement (the **"*Closing"***) shall take place at the offices of Akerman Senterfitt, in Miami, Florida, commencing at 9:00 a.m. local time on the second business day following the satisfaction or waiver of all conditions to the obligations of the parties to consummate the transactions contemplated hereby (other than conditions with respect to actions the respective parties will take at the Closing itself) or such other date as the parties may mutually determine (the **"*Closing Date"***).

2.3 Effective Times.

(a) Froptix Merger Effective Time. Prior to the Closing, Parent, Merger Sub I and Froptix shall prepare, and, on the Closing Date, Froptix shall file (i) with the Secretary of State of the State of Florida, Articles and a Plan of Merger in substantially the form attached hereto as Exhibit A (the ***"Froptix Articles of Merger"***), (ii) with the Secretary of State of the State of Delaware, a Certificate of Merger in substantially the form attached hereto as Exhibit B (the "***Froptix Certificate of Merger"***), and/or (iii) such other appropriate documents executed in accordance with the applicable provisions of FBCA and the LLC Act and shall make all other filings or recordings required under the FBCA and the LLC Act to effect the Froptix Merger. The Froptix Merger shall become effective at the later of such time as the Articles of Merger and the

Froptix Certificate of Merger are accepted for recording by the Secretary of State of the State of Florida or Delaware, as applicable. The time at which the Froptix Merger shall become effective as aforesaid is referred to as the "***Froptix Merger Effective Time***."

(b) Acuity Merger Effective Time. Prior to the Closing, Parent, Merger Sub II and Acuity shall prepare, and, on the Closing Date, Acuity shall file with the Secretary of State of the State of Delaware, a Certificate of Merger in the form attached hereto as Exhibit C (the ***"Acuity Certificate of Merger"***), and/or such other appropriate documents executed in accordance with the applicable provisions of the DGCL and the LLC Act and shall make all other filings or recordings required under the DGCL and the LLC Act to effect the Acuity Merger. The Acuity Merger shall become effective at such time as the Certificate of Merger is accepted for recording by the Secretary of State of the State of Delaware. The time at which the Acuity Merger shall become effective as aforesaid is referred to as the "***Acuity Merger Effective Time***."

2.4 Legal Effects of the Mergers.

(a) Legal Effect of The Froptix Merger. At the Froptix Merger Effective Time, the effect of the Froptix Merger shall be as provided in this Agreement and the applicable provisions of the FBCA and the LLC Act. Without limiting the generality of the foregoing, and subject thereto, at the Froptix Merger Effective Time, all of the assets, properties, rights, privileges, powers and franchises of Froptix and Merger Sub I shall vest in Surviving Company I, and all of the debts, liabilities, obligations, restrictions and duties of Froptix and Merger Sub I shall become the debts, liabilities, obligations, restrictions and duties of Surviving Company I.

(b) Legal Effect of The Acuity Merger. At the Acuity Merger Effective Time, the effect of the Acuity Merger shall be as provided in this Agreement and the applicable provisions of the DGCL and the LLC Act. Without limiting the generality of the foregoing, and subject thereto, at the Acuity Merger Effective Time, all of the assets, properties, rights, privileges, powers and franchises of Acuity and Merger Sub II shall vest in Surviving Company II, and all of the debts, liabilities, obligations, restrictions and duties of Acuity and Merger Sub II shall become the debts, liabilities, obligations, restrictions and duties of Surviving Company II.

2.5 Certificates of Formation and Limited Liability Company Agreements.

(a) Certificate of Formation of Surviving Company I. As of the Froptix Merger Effective Time, by virtue of the Froptix Merger and without any action on the part of Parent, Merger Sub I or Froptix, the Certificate of Formation of Surviving Company I shall be the Certificate of Formation of Merger Sub I, as in effect immediately prior to the Froptix Merger Effective Time, until thereafter amended in accordance with the LLC Act and such Certificate of Formation; provided, however, that as of the Froptix Merger Effective Time the Certificate of Formation shall provide that the name of Surviving Company I is "Froptix, LLC."

(b) Limited Liability Company Agreement of Surviving Company I. As of the Effective Time, by virtue of the Froptix Merger and without any action on the part of Parent, Merger Sub I or Froptix, the Limited Liability Company Agreement of Surviving Company I shall be the Limited Liability Company Agreement of Merger Sub I, as in effect immediately prior to the Froptix Merger Effective Time, until thereafter amended in accordance with the LLC Act, the Certificate of Formation of Surviving Company I and such Limited Liability Company Agreement; provided, however, that all references in such Limited Liability Company Agreement to Merger Sub I shall be amended to refer to "Froptix, LLC."

(c) Certificate of Formation of Surviving Company II. As of the Acuity Merger Effective Time, by virtue of the Acuity Merger and without any action on the part of Parent, Merger Sub II or Acuity, the Certificate of Formation of Surviving Company II shall be the Certificate of Formation of Merger Sub II, as in effect immediately prior to the Acuity Merger Effective Time, until thereafter amended in accordance with the LLC Act and such Certificate of Formation; provided, however, that as of the Acuity Merger Effective Time the Certificate of Formation shall provide that the name of Surviving Company II is "Acuity Pharmaceuticals, LLC."

(d) Limited Liability Company Agreement of Surviving Company II. As of the Effective Time, by virtue of the Acuity Merger and without any action on the part of Parent, Merger Sub II or Acuity, the Limited Liability Company Agreement of Surviving Company II shall be the Limited Liability Company Agreement of Merger Sub II, as in effect immediately prior to the Acuity Merger Effective Time, until thereafter amended in accordance with the LLC Act, the Certificate of Formation of Surviving Company II and such Limited Liability Company Agreement; provided, however, that all references in such Limited Liability Company Agreement to Merger Sub II shall be amended to refer to "Acuity Pharmaceuticals, LLC."

2.6 Managers and Officers.

(a) Managers of Surviving Company I. The initial mangers of Surviving Company I, if any, shall be the managers of Merger Sub I, if any, as of immediately prior to the Froptix Merger Effective Time, until their respective successors are duly elected or appointed and qualified.

(b) Officers of Surviving Company I. The initial officers of Surviving Company I shall be the officers of Merger Sub I as of immediately prior to the Froptix Merger Effective Time.

(c) Managers of Surviving Company II. The initial managers of Surviving Company II, if any, shall be the managers of Merger Sub II, if any, as of immediately prior to the Acuity Merger Effective Time, until their respective successors are duly elected or appointed and qualified.

(d) Officers of Surviving Company II. The initial officers of Surviving Company II shall be the officers of Merger Sub II as of immediately prior to the Acuity Merger Effective Time.

ARTICLE III
MANNER OF CONVERTING SECURITIES; TREATMENT OF OPTIONS AND WARRANTS

3.1 Conversion of Shares in the Froptix Merger. Subject to the provisions of this Article III and Section 11.3, at the Froptix Merger Effective Time, by virtue of the Froptix Merger and without any action on the part of Parent, Merger Sub I or Froptix, or any of the stockholders or members of any of the foregoing, the outstanding securities of Froptix and Merger Sub I shall be converted as follows:

(a) Each share of Froptix Common Stock issued and outstanding immediately prior to the Froptix Merger Effective Time shall cease to be outstanding and shall be converted into and exchanged for the right to receive (i) a number of validly issued, fully paid and nonassessable shares of Parent Common Stock determined by dividing (x) the quotient of the Froptix Valuation divided by the Parent Per Share Stock Valuation by (y) the number of shares of Froptix Common Stock issued and outstanding on a fully diluted basis at such time (this ratio of Parent Common Stock to Froptix Common Stock being "***Froptix Common Exchange Ratio"***), (ii) and a warrant (a "***Parent Warrant"***) to purchase a number of shares of Parent Common Stock equal to product of the Froptix Warrant Number and the Froptix Common Exchange Ratio. The Parent Warrants will be issued in substantially the form attached hereto as Exhibit D. One-third of the Parent Warrants will have an exercise price equal to 1.35 times the Parent Per Share Stock Valuation. One-third of the Parent Warrants will have an exercise price equal to 1.70 times the Parent Per Share Stock Valuation. One-third of the Parent Warrants will have an exercise price equal to 2.1 times the Parent Per Share Stock Valuation.

(b) Each unit of membership interest of Merger Sub I issued and outstanding immediately prior to the Froptix Merger Effective Time shall remain issued and outstanding from and after the Froptix Merger Effective Time. Each certificate of Merger Sub I evidencing ownership of any such units shall continue to evidence ownership of such units of Surviving Company I.

3.2 Froptix Options.

(a) Subject to the provisions of this Article III, at the Froptix Merger Effective Time, each outstanding and unexercised option to purchase Froptix Shares granted or as otherwise approved by the Froptix Board of Directors (each, a "***Froptix Option"***), whether or not exercisable or vested, shall be converted into an option to purchase shares of Parent Common Stock (each, an "***Adjusted Parent Option"***), on substantially the same terms and conditions as were applicable under the Froptix Option. Each Adjusted Parent Option shall be exercisable for a number of shares of Parent Common Stock equal to (i) the number of Froptix Shares subject to the Froptix Option to

which such Adjusted Parent Option relates multiplied by (ii) the Froptix Common Exchange Ratio, rounded down to the nearest whole number of shares. The per share exercise price of each Adjusted Parent Option shall equal (A) the per share exercise price of the Froptix Option to which such Adjusted Parent Option relates divided by (B) the Froptix Common Exchange Ratio, rounded up to the nearest whole cent. Parent shall issue each Adjusted Parent Option to each holder of a Froptix Option upon surrender thereof or, in case such Froptix Option shall be lost, stolen or destroyed, upon receipt of an affidavit of that fact by the holder thereof and, if required by Parent, the written agreement by such Person to indemnify Parent and Surviving Company I against any claim that may be made against it with respect to such Froptix Option.

(b) Froptix and Parent shall take any actions necessary and appropriate to cause the obligations of Froptix under the agreements under which the Adjusted Parent Option was originally granted to be assumed by Parent at the Froptix Merger Effective Time subject to the adjustments required by Section 3.2(a). The terms of each Froptix Option as in effect immediately prior to the Froptix Merger Effective Time, shall continue to apply in all material respects to the corresponding Adjusted Parent Option.

(c) Except to the extent required under the terms of the Froptix Options, all restrictions or limitations on transfer and vesting with respect to Froptix Options awarded under any plan, program or arrangement of Froptix, to the extent that such restrictions or limitations shall not have already lapsed, shall remain in full force and effect with respect to such Adjusted Parent Option after giving effect to the Froptix Merger.

(d) Parent shall take all corporate action necessary to reserve for issuance a sufficient number of shares of Parent Common Stock for delivery upon exercise of the Adjusted Parent Options. Within seventy-five (75) days after the Closing Date, Parent shall file a registration statement on Form S-8 (if available) (or any successor or other appropriate forms) with respect to the shares of Parent Common Stock subject to such options and shall use all reasonable efforts to maintain the effectiveness of such registration statement (and maintain the current status of the prospectus or prospectuses contained therein) for so long as such options remain outstanding.

3.3 Conversion of Shares in the Acuity Merger. Subject to the provisions of this Article III and Section 11.3, at the Acuity Merger Effective Time, by virtue of the Acuity Merger and without any action on the part of Parent, Merger Sub II or Acuity, or any of the stockholders or members of any of the foregoing, the outstanding securities of Acuity and Merger Sub II shall be converted as follows:

(a) Each share of Acuity Common Stock issued and outstanding immediately prior to the Acuity Merger Effective Time (other than Acuity Dissenting Shares) shall cease to be outstanding and shall be converted into and exchanged for the right to receive (i) a number of validly issued, fully paid and nonassessable shares of Parent Common Stock determined by dividing (x) the quotient of the Acuity Common Valuation divided by the Parent Per Share Stock Valuation by (y) the number of shares of Acuity Common Stock issued and outstanding at such time (not on a fully-diluted basis)

(the "***Acuity Common Exchange Ratio"***), (ii) and a Parent Warrant to purchase a number of shares of Parent Common Stock equal to the product of the Acuity Warrant Number and the Acuity Common Exchange Ratio. One-third of the Parent Warrants will have an exercise price equal to 1.35 times the Parent Per Share Stock Valuation. One-third of the Parent Warrants will have an exercise price equal to 1.70 times the Parent Per Share Stock Valuation. One-third of the Parent Warrants will have an exercise price equal to 2.1 times the Parent Per Share Stock Valuation.

(b) Each share of Acuity Series A Preferred Stock issued and outstanding immediately prior to the Acuity Merger Effective Time (other than Acuity Dissenting Shares) shall cease to be outstanding and shall be converted into and exchanged for the right to receive (i) a number of validly issued, fully paid and nonassessable shares of Parent Common Stock determined by dividing (x) the quotient of the Acuity Series A Valuation divided by the Parent Per Share Stock Valuation by (y) the number of shares of Acuity Series A Preferred Stock issued and outstanding at such time (not on a fully diluted basis) (the "***Acuity Series A Preferred Exchange Ratio"***), (ii) and a Parent Warrant to purchase a number of shares of Parent Common Stock equal to the product of the Acuity Warrant Number and the Acuity Series A Preferred Exchange Ratio. One-third of the Parent Warrants will have an exercise price equal to 1.35 times the Parent Per Share Stock Valuation. One-third of the Parent Warrants will have an exercise price equal to 1.70 times the Parent Per Share Stock Valuation. One-third of the Parent Warrants will have an exercise price equal to 2.1 times the Parent Per Share Stock Valuation.

(c) Each share of Acuity Series B Preferred Stock issued and outstanding immediately prior to the Acuity Merger Effective Time (other than Acuity Dissenting Shares) shall cease to be outstanding and shall be converted into and exchanged for the right to receive (i) a number of validly issued, fully paid and nonassessable shares of Parent Series C Preferred Stock determined by dividing (x) the quotient of the Acuity Series B Valuation divided by the Parent Per Share Stock Valuation by (y) 100 multiplied by the number of shares of Acuity Series B Preferred Stock issued and outstanding at such time (not on a fully diluted basis) (the "***Acuity Series B Preferred Exchange Ratio"***), (ii) and a Parent Warrant to purchase a number of shares of Parent Common Stock equal to (w) the product of the Acuity Warrant Number and the Acuity Series B Preferred Exchange Ratio multiplied by (z) one hundred. One-third of the Parent Warrants will have an exercise price equal to 1.35 times the Parent Per Share Stock Valuation. One-third of the Parent Warrants will have an exercise price equal to 1.70 times the Parent Per Share Stock Valuation. One-third of the Parent Warrants will have an exercise price equal to 2.1 times the Parent Per Share Stock Valuation.

(d) Each unit of membership interest of Merger Sub II issued and outstanding immediately prior to the Acuity Merger Effective Time shall remain issued and outstanding from and after the Acuity Merger Effective Time. Each certificate of Merger Sub II representing any such units shall continue to evidence ownership of such units of Surviving Company II.

3.4 Acuity Options.

(a) Subject to the provisions of this Article III, at the Acuity Merger Effective Time, each outstanding and unexercised option to purchase shares of Acuity Common Stock granted under any of the Acuity Option Plans or as otherwise approved by the Acuity Board of Directors (each, an "***Acuity Common Option"***), whether or not exercisable or vested, shall be converted into an option to purchase an Adjusted Parent Option, on substantially the same terms and conditions as were applicable under the Acuity Common Option. Each Adjusted Parent Option shall be exercisable for a number of shares of Parent Common Stock equal to (i) the number of shares of Acuity Common Stock subject to the Acuity Option to which such Adjusted Parent Option relates multiplied by (ii) the Acuity Common Exchange Ratio, rounded down to the nearest whole number of shares. The per share exercise price of each Adjusted Parent Option shall equal (A) the per share exercise price of the Acuity Option to which such Adjusted Parent Option relates divided by (B) the Acuity Common Exchange Ratio, rounded up to the nearest whole cent. Parent shall issue each Adjusted Parent Option to each holder of an Acuity Option upon surrender thereof or, in case such Acuity Option shall be lost, stolen or destroyed, upon receipt of an affidavit of that fact by the holder thereof and, if required by Parent, the written agreement by such Person to indemnify Parent and Surviving Company II against any claim that may be made against it with respect to such Acuity Option.

(b) Subject to the provisions of this Article III, at the Acuity Merger Effective Time, each outstanding and unexercised option to purchase shares of Acuity Series B Preferred Stock granted under any of the Acuity Option Plans or as otherwise approved by the Acuity Board of Directors (each, an "***Acuity Preferred Option"*** and with the Acuity Common Options, the "***Acuity Options"***), whether or not exercisable or vested, shall be converted into an option to purchase Parent Series C Preferred Stock (an ***"Adjusted Parent Series C Option"***), on substantially the same terms and conditions as were applicable under the Acuity Preferred Option. Each Adjusted Parent Series C Option shall be exercisable for a number of shares of Parent Series C Preferred Stock equal to (i) the number of shares of Acuity Series B Preferred Stock subject to the Acuity Preferred Option to which such Adjusted Parent Series C Option relates multiplied by (ii) the Acuity Series B Preferred Exchange Ratio, rounded to the nearest whole number of shares. The per share exercise price of each Adjusted Parent Series C Option shall equal (A) the per share exercise price of the Acuity Preferred Option to which such Adjusted Parent Series C Option relates divided by (B) the Acuity Series B Preferred Exchange Ratio, rounded to the nearest whole cent. Parent shall issue each Adjusted Parent Series C Option to each holder of an Acuity Preferred Option upon surrender thereof or, in case such Acuity Preferred Option shall be lost, stolen or destroyed, upon receipt of an affidavit of that fact by the holder thereof and, if required by Parent, the written agreement by such Person to indemnify Parent and Surviving Company II against any claim that may be made against it with respect to such Acuity Preferred Option.

(c) Acuity and Parent shall take any actions necessary and appropriate to cause the obligations of Acuity under the Acuity Option Plans and agreements under which the Adjusted Parent Option or Adjusted Parent Series C Option was originally

granted to be assumed by Parent at the Acuity Merger Effective Time subject to the adjustments required by Section 3.4(a) or Section 3.4(b). The terms of each Acuity Option and the Acuity Option Plans under which such Acuity Option was initially granted, in each case, as in effect immediately prior to the Acuity Merger Effective Time, shall continue to apply in all material respects to the corresponding Adjusted Parent Option or Adjusted Parent Series C Option.

(d) Except to the extent required under the terms of the Acuity Options (and not waived by any holder thereof), all restrictions or limitations on transfer and vesting with respect to Acuity Options awarded under the Acuity Option Plans or any other plan, program or arrangement of Acuity, to the extent that such restrictions or limitations shall not have already lapsed, shall remain in full force and effect with respect to such Adjusted Parent Option or Adjusted Parent Series C Option after giving effect to the Acuity Merger.

(e) Parent shall take all corporate action necessary to reserve for issuance a sufficient number of shares of Parent Common Stock and Parent Series C Preferred Stock for delivery upon exercise of the Adjusted Parent Options and the Adjusted Parent Series C Options, as applicable. Within seventy-five (75) days after the Closing Date, Parent shall file a registration statement on Form S-8 (if available) (or any successor or other appropriate forms) with respect to the shares of Parent Common Stock subject to such options and shall use all reasonable efforts to maintain the effectiveness of such registration statement (and maintain the current status of the prospectus or prospectuses contained therein) for so long as such options remain outstanding.

3.5 Acuity Warrants. Subject to the provisions of this Article III, at the Acuity Merger Effective Time:

(a) Pursuant to the terms of each outstanding warrant to purchase shares of Acuity Common Stock (an "***Acuity Common Warrant"***), each Acuity Common Warrant shall be assumed by Parent and shall represent the right to acquire upon exercise thereof the number of shares of Parent Common Stock (rounded down to the nearest whole share) determined by multiplying the number of shares of Acuity Common Stock issuable upon the exercise of each Acuity Common Warrant by the Acuity Common Exchange Ratio; provided, that the aggregate exercise price of each Acuity Common Warrant shall remain unchanged. Each holder of an Acuity Common Warrant shall also receive a Parent Warrant to purchase a number of shares of Parent Common Stock equal to the product of the Acuity Warrant Number and the Acuity Common Exchange Ratio for each share of Acuity Common Stock which the Acuity Common Warrant was exercisable into immediately prior to the Acuity Merger Effective Time. One-third of the Parent Warrants will have an exercise price equal to 1.35 times the Parent Per Share Stock Valuation. One-third of the Parent Warrants will have an exercise price equal to 1.70 times the Parent Per Share Stock Valuation. One-third of the Parent Warrants will have an exercise price equal to 2.1 times the Parent Per Share Stock Valuation.

(b) Pursuant to the terms of each outstanding warrant to purchase shares of Acuity Series B Preferred Stock (an "***Acuity Series B Preferred Warrant"***), each Acuity Series B Preferred Warrant shall be assumed by Parent and amended and converted into the right to acquire upon exercise thereof the number of shares of Parent Series C Preferred Stock (rounded down to the nearest whole share) determined by multiplying the number of shares of Acuity Series B Preferred Stock issuable upon the

exercise of each Acuity Series B Preferred Warrant by the Acuity Series B Preferred Exchange Ratio; provided, that the aggregate exercise price of each Acuity Series B Preferred Warrant shall remain unchanged. Each holder of an Acuity Series B Preferred Warrant shall also receive a Parent Warrant to purchase a number of shares of Parent Common Stock equal to (w) the product of the Acuity Warrant Number and the Acuity Series B Preferred Exchange Ratio multiplied by 100 (z) for each share of Acuity Series B Stock which the Acuity Series B Preferred Warrant was exercisable into immediately prior to the Acuity Merger Effective Time. One-third of the Parent Warrants will have an exercise price equal to 1.35 times the Parent Per Share Stock Valuation. One-third of the Parent Warrants will have an exercise price equal to 1.70 times the Parent Per Share Stock Valuation. One-third of the Parent Warrants will have an exercise price equal to 2.1 times the Parent Per Share Stock Valuation.

(c) Subject to Section 11.3, Parent shall issue each amended and converted warrant contemplated by this Section 3.5 to each holder of an Acuity Common Warrant or an Acuity Series B Preferred Warrant upon surrender thereof or, in case such warrant shall be lost, stolen or destroyed, upon receipt of an affidavit of that fact by the holder thereof and, if required by Parent, the written agreement by such Person to indemnify Parent and Surviving Company II against any claim that may be made against it with respect to such Acuity Common Warrant or an Acuity Series B Preferred Warrant.

3.6 Surrender and Exchange of Froptix Securities. As soon as practicable after the Froptix Merger Effective Time and subject to Section 11.3, upon (i) surrender of a certificate or certificates representing the Froptix Shares that were outstanding immediately prior to the Froptix Merger Effective Time (each a "***Froptix Stock Certificate"***) to Parent (or, in case such certificates shall be lost, stolen or destroyed, an affidavit of that fact by the holder thereof pursuant to Section 3.11) and (ii) delivery to Parent of an executed Letter of Transmittal, Parent shall deliver to the record holder of the Froptix Shares surrendering such certificate or certificates, a warrant agreement or agreements and a certificate or certificates (or evidence of shares in book-entry form) registered in the name of such shareholder representing the number of shares of Parent Common Stock and Parent Warrants to which such holder is entitled under Section 3.1(a). In the event of a transfer of ownership of Froptix Shares that is not registered in the transfer records of Froptix, a certificate (or evidence of shares in book-entry form) representing the proper number of whole shares of Parent Common Stock may be issued to a Person other than the Person in whose name the Froptix Stock Certificate so surrendered is registered, if, upon delivery by the holder thereof, such Froptix Stock Certificate shall be properly endorsed or shall otherwise be in proper form for transfer and the Person requesting such issuance shall have paid any transfer and other taxes required by reason of the issuance of shares of Parent Common Stock to a Person other than the registered holder of such Froptix Stock Certificate or shall have established to the reasonable satisfaction of Parent that such tax either has been paid or is not applicable, and shall have demonstrated, to the reasonable satisfaction of Parent, that the transfer of such Froptix Shares to the requesting person was accomplished in conformity with all applicable securities Laws and with any other agreements restricting the transfer of the Froptix Shares, to which such Froptix Shares are subject. As of the Froptix Merger Effective Time, each Froptix Share issued and outstanding immediately prior to the Froptix Merger Effective Time shall no longer be outstanding and shall automatically be canceled and retired and until the certificate or certificates evidencing such shares are surrendered, each certificate that immediately prior to the Froptix Merger Effective Time represented any outstanding Froptix Share shall be deemed at and after the Froptix

Merger Effective Time to represent only the right to receive upon surrender as aforesaid the consideration specified in Section 3.1(a) for the holder thereof.

3.7 Surrender and Exchange of Acuity Securities. As soon as practicable after the Acuity Merger Effective Time and subject to Section 11.3, upon (i) surrender of a certificate or certificates representing Acuity Shares that were outstanding immediately prior to the Acuity Merger Effective Time (each an "***Acuity Stock Certificate***") to Parent (or, in case such certificates shall be lost, stolen or destroyed, an affidavit of that fact by the holder thereof pursuant to Section 3.11) and (ii) delivery to Parent of an executed Letter of Transmittal, Parent shall deliver to the record holder of the Acuity Shares surrendering such certificate or certificates, a warrant agreement or agreements and a certificate or certificates (or evidence of shares in book-entry form) registered in the name of such shareholder representing the number of shares of Parent Common Stock or Parent Series C Preferred Stock and Parent Warrants to which such holder is entitled under Section 3.3(a), Section 3.3(b) and Section 3.3(c). In the event of a transfer of ownership of Acuity Shares that is not registered in the transfer records of Acuity, a certificate (or evidence of shares in book-entry form) representing the proper number of whole shares of Parent Common Stock or Parent Series C Preferred Stock, as applicable, may be issued to a Person other than the Person in whose name the Acuity Stock Certificate so surrendered is registered, if, upon delivery by the holder thereof, such Acuity Stock Certificate shall be properly endorsed or shall otherwise be in proper form for transfer and the Person requesting such issuance shall have paid any transfer and other taxes required by reason of the issuance of shares of Parent Common Stock or Parent Series C Preferred Stock, as applicable, to a Person other than the registered holder of such Acuity Stock Certificate or shall have established to the reasonable satisfaction of Parent that such tax either has been paid or is not applicable, and shall have demonstrated, to the reasonable satisfaction of Parent, that the transfer of such Acuity Shares to the requesting person was accomplished in conformity with all applicable securities Laws and with any other agreements restricting the transfer of the Acuity Shares, to which such Acuity Shares are subject. As of the Acuity Merger Effective Time, each Acuity Share issued and outstanding immediately prior to Acuity the Merger Effective Time (other than Acuity Dissenting Shares) shall no longer be outstanding and shall automatically be canceled and retired and until the certificate or certificates evidencing such shares are surrendered, each certificate that immediately prior to the Acuity Merger Effective Time represented any outstanding Acuity Share (other than Acuity Dissenting Shares) shall be deemed at and after the Acuity Merger Effective Time to represent only the right to receive upon surrender as aforesaid the consideration specified in Section 3.3(a), Section 3.3(b) and Section 3.3(c), as applicable, for the holder thereof.

3.8 Transfer Books; No Further Ownership Rights in Froptix Shares. All shares of Parent Common Stock and Parent Warrants issued upon the surrender for exchange of Froptix Stock Certificates in accordance with the terms of this Article III shall be deemed to have been issued (and paid) in full satisfaction of all rights pertaining to the Froptix Shares previously represented by such Froptix Stock Certificates, and at the Froptix Merger Effective Time, the share transfer books of Froptix shall be closed and thereafter there shall be no further registration of transfers on the share transfer books of Surviving Company I of the Froptix Shares that were outstanding immediately prior to

the Froptix Merger Effective Time. From and after the Froptix Merger Effective Time, the holders of Froptix Stock Certificates that evidenced ownership of the Froptix Shares outstanding immediately prior to the Froptix Merger Effective Time shall cease to have any rights with respect to such shares, except as otherwise provided for herein or by applicable Law.

3.9 Transfer Books; No Further Ownership Rights in Acuity Shares. All shares of Parent Common Stock, Parent Series C Preferred Stock and Parent Warrants issued upon the surrender for exchange of Acuity Stock Certificates in accordance with the terms of this Article III shall be deemed to have been issued (and paid) in full satisfaction of all rights pertaining to the Acuity Shares previously represented by such Acuity Stock Certificates, and at the Acuity Merger Effective Time, the share transfer books of Acuity shall be closed and thereafter there shall be no further registration of transfers on the share transfer books of Surviving Company II of the Acuity Shares that were outstanding immediately prior to the Acuity Merger Effective Time. From and after the Acuity Merger Effective Time, the holders of Acuity Stock Certificates that evidenced ownership of the Acuity Shares outstanding immediately prior to the Acuity Merger Effective Time shall cease to have any rights with respect to such shares, except as otherwise provided for herein or by applicable Law.

3.10 No Fractional Shares or Warrants. No fraction of a share of Parent Common Stock or Parent Series C Preferred Stock (including any Parent Warrant to purchase a fraction of a share of Parent Common Stock or Parent Series C Preferred Stock) shall be issued upon the surrender for exchange of a Froptix Stock Certificate or Acuity Stock Certificate (or evidence of such shares in book-entry form), no dividends or other distributions of Parent shall relate to such fractional share interests and such fractional share interests will not entitle the owner thereof to vote or to any rights of a stockholder of Parent. Each holder of Froptix Shares or Acuity Shares who would otherwise be entitled to a fraction of a share of Parent Common Stock or Parent Series C Preferred Stock (after aggregating all fractional shares of Parent Common Stock or Parent Series C Preferred Stock that otherwise would be received by such holder) shall, receive from Parent, in lieu of such fractional share, one share of Parent Common Stock and/or Parent Series C Preferred Stock, as the case may be.

3.11 Lost, Stolen or Destroyed Certificates. If any Froptix Stock Certificate or Acuity Stock Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Froptix Stock Certificate or Acuity Stock Certificate to be lost, stolen or destroyed and, if required by Parent, the written agreement by such Person to indemnify Parent and Surviving Company I or Surviving Company II, as applicable, against any claim that may be made against it with respect to such Froptix Stock Certificate or Acuity Stock Certificate, Parent will issue, subject to Section 11.3, in exchange for such lost, stolen or destroyed Froptix Stock Certificate or Acuity Stock Certificate, Parent Common Stock or Parent Series C Preferred Stock, as applicable, and Parent Warrants pursuant to this Agreement.

3.12 Dissenting Shares. Notwithstanding anything in this Agreement to the contrary, Acuity Shares which are issued and outstanding immediately prior to the Acuity

Merger Effective Time and which are held by stockholders properly exercising appraisal rights available under Section 262 of the DGCL (the "***Acuity Dissenting Shares"***) shall not be converted into or be exchangeable for the right to receive the shares of Parent Common Stock or Parent Series C Preferred Stock, as applicable, and Parent Warrants, unless and until such holders shall have failed to perfect or shall have effectively withdrawn or lost their rights to appraisal under the DGCL. Acuity Dissenting Shares shall be treated in accordance with Section 262 of the DGCL. If any such holder shall have failed to perfect or shall have effectively withdrawn or lost such right to appraisal, such holder's Acuity Shares shall thereupon be converted into and become exchangeable only for the right to receive, as of the Acuity Merger Effective Time, shares of Parent Common Stock or Parent Series C Preferred Stock, as applicable, and Parent Warrants. Acuity shall give (a) Parent and Froptix prompt notice of any written demands for appraisal of any Acuity Shares, attempted withdrawals of such demands and any other instruments, served pursuant to the DGCL and received by Acuity relating to rights to be paid the "fair value" of Acuity Dissenting Shares, as provided in Section 262 of the DGCL and (b) Parent the opportunity to participate in, and after the Closing, direct, all negotiations and proceedings with respect to demands for appraisal under the DGCL. Acuity shall not, except with the prior written consent of Parent and Froptix, voluntarily make or agree to make any payment with respect to any demands for appraisals of Acuity Shares. Acuity or Surviving Company II, as applicable under Section 262 of the DGCL, shall comply will all notice requirements under such Section.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF ACUITY

Except as set forth on the Schedule of Exceptions delivered to Parent in connection with this Agreement, Acuity represents and warrants to Parent as of the date of this Agreement as follows:

4.1 Organization and Standing. Acuity is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Acuity has the requisite corporate power and authority to own and operate its properties and assets, and to carry on its business as currently conducted. Acuity is presently qualified to do business as a foreign corporation in the Commonwealth of Pennsylvania and in each other jurisdiction in which the failure to be so qualified would have a Material Adverse Effect with respect to Acuity. True and accurate copies of Acuity's Certificate of Incorporation (the "***Acuity Certificate"***) and Acuity's By-laws (the "***Acuity By-laws"***), each as in effect as of the date hereof and at the Closing, have been delivered to Parent.

4.2 Corporate Power. Acuity has all requisite legal and corporate power and authority to execute and deliver this Agreement and to carry out and perform its other obligations hereunder.

4.3 Authorization. All action on the part of Acuity and its officers, directors and security holders necessary for the authorization, execution and delivery of this Agreement and the performance of its respective obligations hereunder, has been taken or will be taken prior to or upon the Closing, as applicable. This Agreement has been duly

executed by Acuity and, assuming the due authorization, execution and delivery by the other parties hereto, constitutes and will constitute a valid and legally binding obligation of Acuity, except (i) as limited by Laws of general application relating to bankruptcy, insolvency and the relief of debtors and (ii) as limited by rules of Law governing specific performance, injunctive relief or other equitable remedies and by general principles of equity.

4.4 Subsidiaries. Acuity does not own or control, directly or indirectly, any interest in any corporation, partnership, limited liability company, association, other business entity or Person. Acuity is not a participant in any joint venture, partnership or similar arrangement. Since its inception, Acuity has not consolidated or merged with, acquired all or substantially all of the assets of, or acquired the stock of or any interest in any Person.

4.5 Capitalization.

(a) The authorized capital stock of Acuity on the date hereof and immediately prior to the Closing consists, and shall consist, of 19,584,956 shares of Acuity Common Stock, of which 2,116,877 shares of Acuity Common Stock are issued and outstanding, and 13,997,179 shares of Acuity Preferred Stock, of which 742,000 are designated Acuity Series A Preferred Stock and of which 13,255,179 are designated Acuity Series B Preferred Stock. Immediately prior to the Closing, 742,000 shares of Acuity Series A Preferred Stock were issued and outstanding and convertible into Acuity Common Stock on a one-for-one basis, and 8,817,679 shares of Acuity Series B Preferred were issued or outstanding and convertible into Acuity Common Stock on a one-for-one basis. The Acuity Common Stock and the Acuity Preferred Stock have the rights, preferences, privileges and restrictions set forth in the Acuity Certificate and under Delaware Law. All issued and outstanding shares of Acuity's capital stock have been duly authorized and validly issued in compliance with applicable Laws, and are fully paid and nonassessable and free and clear of Liens or third party rights and of any restrictions on transfer, except for transfer restrictions of the federal and state securities laws. To Acuity's knowledge, each holder of any capital stock of Acuity is an "accredited investor" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

(b) There are no options, warrants, preemptive rights, rights of first refusal, put or call rights or obligations or anti-dilution or other rights to purchase or acquire from Acuity any of Acuity's authorized and unissued capital stock. There are no rights to have Acuity's capital stock registered for sale to the public in connection with the Laws of any jurisdiction, no agreements relating to the voting of Acuity's voting securities (except as contemplated hereby) and no restrictions on the transfer of Acuity's capital stock or other equity securities, other than those arising under applicable securities Laws. All outstanding shares, options and warrants were issued pursuant to and in compliance with a valid exemption from registration under the Securities Act, and have been issued in compliance with applicable state securities Laws. The exercise price of each option to purchase or acquire from Acuity any of Acuity's authorized and unissued capital stock was intended to constitute a price which is equal to or greater than the fair

market value of the underlying shares on the date of grant, as then determined in good faith by the Acuity board of directors.

4.6 Financial Statements. Acuity has delivered to Froptix and Parent the audited financial statements of Acuity as of and for the twelve-month period ended December 31, 2004, 2005 and 2006 (the "***Acuity Financial Statements"***). The Acuity Financial Statements, together with the notes thereto (if any) have been prepared in accordance with GAAP, except that the unaudited Acuity Financial Statements may not contain all footnotes required by GAAP. The Acuity Financial Statements, together with the notes thereto (if any) are true and correct in all material respects and fairly present in all material respects the financial condition, results of operations and cash flow of Acuity as of the dates, and for the periods, indicated therein, subject to normal year-end audit adjustments, which shall not be material. No event has occurred and nothing has come to the attention of Acuity since September 30, 2006 to indicate that the Acuity Financial Statements were not true and correct in all material respects as of the date thereof. Except as set forth in the Acuity Financial Statements, Acuity has no liabilities of any nature, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to September 30, 2006 that do not exceed, in the aggregate, $50,000, and (ii) obligations under contracts and commitments incurred in the ordinary course of business and not required under GAAP to be reflected in the Acuity Financial Statements, which, individually or in the aggregate, are not material to the financial condition or operating results of Acuity.

4.7 Absence of Certain Changes or Events. Since September 30, 2006, (i) there has been no event, occurrence or development that, individually or in the aggregate, has resulted in or could reasonably be expected to result in a Material Adverse Effect on Acuity or which, if taken after the date hereof, would constitute a breach of the covenants set forth in Section 7.7 or 7.12, (ii) Acuity has not incurred any material liabilities, and (iii) Acuity has not (a) altered its method of accounting or the identity of its auditors, (b) declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock, and (c) issued any equity securities. Acuity has not taken any steps to seek protection pursuant to any bankruptcy Law nor does Acuity have any knowledge or reason to believe that its creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact that would reasonably lead a creditor to do so. Acuity is not Insolvent as of the date hereof, and after giving effect to the transactions contemplated hereby to occur at the Closing, will not be Insolvent.

4.8 Material Contracts. A list of the oral and written material agreements of Acuity is set forth on Schedule 4.8 of the Schedule of Exceptions (each, an "***Acuity Material Agreement"***). Acuity and to Acuity's knowledge, each other party thereto, has in all material respects performed all the obligations required to be performed by them to date (or such non performing party has received a valid, enforceable and irrevocable written waiver with respect to its non performance), has received no notice of default and are not in default (with due notice or lapse of time or both) under any Acuity Material Agreement. Acuity has no knowledge of any breach or anticipated breach by the other party to any Acuity Material Agreement.

4.9 Intellectual Property

(a) Acuity owns or licenses for use (with a right of sublicense) certain Intellectual Property (***"Acuity Intellectual Property"***), such Acuity Intellectual Property being all that is necessary for the business of Acuity as presently conducted. To Acuity's knowledge, neither Acuity's material pre-clinical and clinical development candidates and processes to make such candidates, nor any Acuity Intellectual Property, infringe or will infringe on the valid and subsisting Intellectual Property rights of others that Acuity is aware of or, to Acuity's knowledge, any other rights of others. No claim is pending or, to Acuity's knowledge, threatened, alleging any such infringement or with respect to the ownership, validity, license or use of, or any infringement resulting from, either the Acuity Intellectual Property or the sale of any material products or services by Acuity. No loss or expiration of the Acuity Intellectual Property is pending or, to Acuity's knowledge, threatened. The Schedule of Exceptions contains a complete list of the patents and patent applications, trademark applications and registrations, copyright registrations, and domain name registrations within Acuity Intellectual Property. There are no outstanding options, licenses or other agreements relating to the Acuity Intellectual Property, and Acuity is not bound by or a party to any options, licenses or agreements with respect to the Intellectual Property of any other person or entity. Acuity is not violation of any license, sublicense, or other agreements to which it is a party or otherwise bound relating to any Intellectual Property. Acuity is not obligated to make any payments by way of royalties, fees or otherwise to any owner or licensor of or claimant to any Intellectual Property with respect to the use thereof in connection with the conduct of its business as presently conducted. There are no agreements, understandings, instruments, contracts, judgments, orders or decrees to which Acuity is a party or by which it is bound that involve indemnification by Acuity with respect to infringements of Intellectual Property. To Acuity's knowledge, all registrations owned by or on behalf of Acuity, and applications to governmental or regulatory authorities in respect of such Acuity Intellectual Property, are valid and in full force and effect. To Acuity's knowledge, no other person is infringing on the Acuity Intellectual Property.

(b) Each former and current officer, employee and consultant of Acuity has executed a Confidential Information and Invention Assignment Agreement, substantially in the form(s) delivered to Parent, and each such agreement remains in full force and effect pursuant to its terms. To Acuity's knowledge, no officer or employee or consultant is in violation of such proprietary information agreement or of any prior employee contract, proprietary information agreement or other agreement relating to the right of any such individual to be employed by, or to contract with, Acuity, and, to Acuity's knowledge, the continued employment by Acuity of its present employees, and the performance of Acuity's contracts with its independent contractors, will not result in any such violation. Acuity has not received any written notice alleging that any such violation has occurred.

(c) The Acuity Merger does not and will not materially or adversely affect any rights of Acuity or Surviving Company II to use any material Acuity Intellectual Property.

4.10 Title to Properties and Assets; Liens. Acuity has good and marketable title to its properties and assets, and has good title to all its leasehold interests, in each case subject to no Lien or lease, other than (i) for Liens for current taxes not yet due and payable, and provided for on the applicable financial statements, and (ii) *de minimis* Liens and defects in title which do not in any case, individually or in the aggregate, materially detract from the value, continued ownership, use or operation of the property subject thereto or materially impair business operations, and that have not arisen otherwise than in the ordinary course of business (the ***"Permitted Liens"***). With respect to the property and assets it leases, Acuity is in compliance with such leases in all material respects and holds a valid leasehold interest free of all Liens other than Permitted Liens. Acuity's properties and assets are in good condition and repair in all material respects. Acuity does not currently own, and has never owned, any real property.

4.11 Compliance with Other Instruments and Laws. Acuity is not in violation or default of any provision of the Acuity Certificate or the Acuity By-laws, each as amended and in effect on the date hereof and as of the Closing. Acuity is not in violation of, default under or breach of any provision of any agreement, instrument, mortgage, deed of trust, loan, contract, commitment, judgment, decree, order or obligation to which it is a party or by which it or any of its properties or assets are bound, which violation, default or breach, individually or in the aggregate, would or could reasonably be expected to have a Material Adverse Effect on Acuity. Acuity is not in violation of any provision of any federal, state or local statute, rule or governmental regulation, judgment, injunction or decree of any governmental authority, which violation, individually or in the aggregate, would or could reasonably be expected to have a Material Adverse Effect on Acuity. The execution and delivery of this Agreement by Acuity, and Acuity's performance of and compliance with the terms hereof, or the consummation of the Acuity Merger and the other transactions contemplated hereby, will not result in any violation, breach or default, be in conflict with or constitute, with or without the passage of time or giving of notice, a default under any Acuity Material Agreement or any of the foregoing provisions, require any consent or waiver under any Acuity Material Agreement or any of the foregoing provisions (other than any consents or waivers that have been obtained), result in the creation of any Lien upon any of the properties or assets of Acuity, trigger any right of cancellation, termination or acceleration under any Acuity Material Agreement or any of the foregoing provisions, create any right of payment in any other person or entity (except as set forth herein), or result in a Material Adverse Effect on Acuity. Acuity has delivered to Parent and Froptix copies of all written communications to and from the FDA and written summaries of all such oral communications. Acuity has no knowledge that could reasonably lead it to believe that the FDA will not approve any of its proposed products or that questions the validity of its clinical trials.

4.12 Litigation. There is no action, suit, proceeding or investigation pending or, to Acuity's knowledge, threatened against or affecting Acuity or its properties or rights before any court or by or before any governmental agency. The foregoing includes, without limitation, actions pending or, to Acuity's knowledge, threatened involving the prior employment of any of Acuity's employees, their use in connection with Acuity's business or any information or techniques allegedly proprietary to any of their former employers, or their obligations under any agreements with prior employers. Acuity is not

a party or subject to, and none of their respective assets is bound by, the provisions of any order, writ, injunction, judgment or decree of any Governmental Authority. There is no action, suit or proceeding initiated by Acuity currently pending or which Acuity intends to initiate.

4.13 Governmental Consents. No consent, approval or authorization of or registration, qualification, designation, declaration or filing with any governmental authority on the part of Acuity is required in connection with the valid execution and delivery of this Agreement or the consummation of any transaction contemplated hereby.

4.14 Permits. Acuity has all franchises, permits, licenses, and any similar authority necessary for the conduct of its business as now being conducted by it, and Acuity reasonably believes it can obtain, without undue burden or expense, any similar authority for the conduct of its business as planned to be conducted. Acuity is not in default in any material respect under any of such franchises, permits, licenses, or other similar authority. Acuity has complied in all material respects with all federal, state or foreign Laws applicable to its business.

4.15 Brokers or Finders. Acuity has not engaged any brokers, finders or agents, and Acuity has not incurred, and will not incur, directly or indirectly, as a result of any action taken by Acuity or any of its affiliates, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement and the transactions contemplated hereby.

4.16 Tax Returns and Payments. Acuity has accurately prepared and timely filed all United States income tax returns and all state and municipal tax returns required to be filed by it, if any, has paid all taxes, assessments, fees and charges owed by it (regardless of whether shown on any such tax return) or has otherwise made adequate provision for the payment of all taxes, assessments, fees and charges owed by it. Acuity has withheld or collected from each payment made to each of its employees, the amount of all taxes (including, but not limited to, federal income taxes, Federal Insurance Contribution Act taxes and Federal Unemployment Tax Act taxes) required to be withheld or collected therefrom, and has paid the same to the proper tax receiving officers or authorized depositaries. Acuity has not been advised in writing (a) that any of its returns have been or are being audited or (b) of any deficiency in assessment or proposed adjustment to its federal, state or other taxes. No assessment or proposed adjustment of Acuity's United States income tax or state or municipal taxes is pending. Acuity is not currently the beneficiary of any extension of time within which to file any tax report or return. No claim has been made by a Governmental Authority in a jurisdiction where Acuity does not file reports and returns that it is or may be subject to taxation by that jurisdiction. There are no Liens on any of the assets of Acuity that arose in connection with the failure or alleged failure to pay any tax. Acuity has withheld and paid all taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, creditor, independent contractor or third party. Acuity has not waived any statute of limitations in respect of taxes or agreed to any extension of time with respect to a tax assessment or deficiency. Acuity has not entered into a closing agreement pursuant to Section 7121 of the Code. Acuity has not made any payments,

and is not and will not become obligated under any contract entered into on or before the Closing Date to make any payments in connection with the transactions contemplated by this Agreement, or in connection with a combination of the transactions contemplated by this Agreement and any other event, that will be non-deductible under Code Section 280G or subject to the excise tax under Code Section 4999 or that would give rise to any obligation to indemnify any Person for any excise tax payable pursuant to Code Section 4999. Acuity is not a party to or bound by any tax allocation or tax sharing agreement or has any current or potential obligation to indemnify any other Person with respect to taxes. Except for consolidated income tax liabilities of any wholly-owned corporate subsidiaries it has owned since their inception, Acuity does not have any liability for taxes of any person under Treasury Regulations Section 1.1502-6 (or any corresponding provision of state, local or foreign income tax Law), or as transferee, successor, by contract or otherwise. References in this Section to Acuity include references to any and all subsidiaries of Acuity that may affect its liability. Acuity has not participated in any reportable transaction as contemplated in Treasury Regulations Section 1.6011-4.

4.17 Employees. The employment of each employee of Acuity is terminable at will. No employee of Acuity has been granted the right to continued employment by Acuity or to any material compensation following termination of employment with Acuity. To Acuity's knowledge, no employee of Acuity, nor any consultant with whom Acuity has contracted, is in violation of any term of any employment contract, noncompetition or proprietary information agreement or any other agreement relating to the right of any such individual to be employed by, or to contract with, Acuity or any judgment, decree or order of any court or administrative agency under which it is subject; and to Acuity's knowledge the continued employment by Acuity of its present employees, and the performance of Acuity's contracts with its independent contractors, will not result in any such violation. Neither the execution or delivery of this Agreement, nor the carrying on of Acuity's business by the employees and independent contractors of Acuity, nor the conduct of Acuity's business as now conducted will conflict with or result in a breach of the terms, conditions, or provisions of, or constitute a default under, any contract, covenant or instrument under which any such employee or independent contractor is now obligated and of which Acuity is aware. Acuity has not received any notice alleging that any such violation has occurred. Acuity is not in default with respect to any obligation to any of its employees. No employee of Acuity is represented by any labor union or covered by any collective bargaining agreement. There is no pending or, to Acuity's knowledge, threatened dispute involving Acuity and any employee or group of its employees. Acuity has complied and is currently complying with all applicable Laws relating to employment and employment practices, terms and conditions of employment, and wages and hours, except for noncompliance that, individually and in the aggregate, would not have a Material Adverse Effect on Acuity.

4.18 Employee Benefit Plans.

(a) Schedule 4.18 of the Schedule of Exceptions sets forth a correct and complete list of all Acuity Employee Benefit Plans. Each Acuity Employee Benefit Plan, and its related documents, has been made available to Parent. No Acuity Employee

Benefit Plan is subject to Title IV of ERISA, or Section 412 of the Code, is or has been subject to Sections 4063 or 4064 of ERISA, or is a multi-employer welfare arrangement as defined in Section 3(40) of ERISA. Neither Acuity nor any ERISA Affiliate has any obligation or liability, contingent or otherwise, under Title IV of ERISA with respect to any "pension plan" as defined in Section 3(2) of ERISA. Neither Acuity nor any of it ERISA Affiliates has ever participated in and has never been required to contribute to any "multi employer plan," as defined in Sections 3(37)(A) and 4001(a)(3) of ERISA and Section 414(f) of the Code or any "multiple employer plan" within the meaning of Section 210(a) of ERISA or Section 413(c) of the Code. No Acuity Employee Benefit Plan provides for, nor does Acuity or any of its subsidiaries have any liability for post-employment life insurance or health benefit coverage for any participant or any beneficiary of a participant, except as may be required under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and at the expense of the participant or the participant's beneficiary.

(b) The Acuity Employee Benefit Plans have been maintained in all material respects in accordance with their terms and with all provisions of ERISA, the Code (including rules and regulations thereunder) and other applicable federal and state Laws and regulations.

(c) There are no pending actions, claims or lawsuits that have been asserted or instituted against any Acuity Employee Benefit Plan, the assets of any of the trusts under any Acuity Employee Benefit Plan or the sponsor of any Acuity Employee Benefit Plan, or, to the knowledge of Acuity, against any fiduciary or administrator of any Acuity Employee Benefit Plan with respect to the operation of any Acuity Employee Benefit Plan (other than routine benefit claims), nor does Acuity have any knowledge of facts that could reasonably be expected to form the basis for any such claim or lawsuit.

(d) Neither will the execution and delivery of this Agreement nor the consummation of the transactions contemplated herein (i) result in any payment becoming due to any current or former employee, officer, director or consultant of Acuity or any of its subsidiaries, (ii) increase any benefits otherwise payable under any Acuity Employee Benefit Plan, (iii) result in the acceleration of the time of payment or vesting of any rights with respect to any such benefits under any Acuity Employee Benefit Plan or (iv) require any contributions or payments to fund, or any security to secure, any obligations under any Acuity Employee Benefit Plan. There are no Acuity Employee Benefit Plans that, individually or collectively, could give rise to the payment in connection with the transactions contemplated by this Agreement, or in connection with a combination of the transactions contemplated by this Agreement and any other event, of any amount that would not be deductible pursuant to the terms of Section 280G of the Code.

4.19 Obligations of Management. Each officer and key employee of Acuity is currently devoting substantially all of his or her business time to the conduct of the business of Acuity. Acuity is not aware that any officer or key employee of Acuity is planning to work less than full time at Acuity in the future. To Acuity's knowledge, no officer or key employee is currently working or plans to work for a competitive enterprise,

whether or not such officer or key employee is or will be compensated by such enterprise or is planning to leave the employ of Acuity.

4.20 Obligations to Related Parties. There are no loans, leases, agreements, understandings, commitments or other continuing transactions between Acuity and any employee, officer, director or member of his or her immediate family or stockholder of Acuity or member of his or her immediate family or any person or entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with any of the foregoing persons. To Acuity's knowledge, none of such persons has any direct or indirect ownership interest in any firm or corporation with which Acuity is affiliated or with which Acuity has a business relationship, or any firm or corporation that competes with Acuity, except in connection with the ownership of stock of publicly-traded companies (but not exceeding 2% of the outstanding capital stock of any such company). No employee, officer, director or member of his or her immediate family or, to Acuity's knowledge, stockholder of Acuity or member of his or her immediate family or any person or entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with any of the foregoing persons, is, directly or indirectly, interested in any material contract with Acuity (other than such contracts as relate to any such person's ownership of capital stock or other securities of Acuity or employment by Acuity). Acuity is not a guarantor or indemnitor of any Indebtedness of any other Person.

4.21 Insurance. Acuity has in full force and effect general commercial, clinical trial, product liability, fire and casualty insurance policies and insurance against other hazards, risks and liabilities to persons and property to the extent and in the manner customary for companies in similar businesses similarly situated and sufficient in amount to allow it to replace any of its material properties or assets that might be damaged or destroyed or sufficient to cover liabilities to which Acuity may reasonably become subject.

4.22 Environmental and Safety Laws. Acuity is in compliance with all applicable environmental Laws, rules and regulations except for noncompliance that, individually or in the aggregate, would not or could not reasonably be expected to have a Material Adverse Effect on Acuity. There is no environmental litigation or other environmental proceeding pending or, to Acuity's knowledge, threatened, by any governmental regulatory authority or others with respect to the business of Acuity. No state of facts exists as to environmental matters or Hazardous Substances that involves the reasonable likelihood of a material capital expenditure by Acuity or that may otherwise have a Material Adverse Effect on Acuity. To Acuity's knowledge, no Hazardous Substances have been used, treated, stored or disposed of, or otherwise deposited, in or on the properties owned or leased by Acuity in violation of any applicable environmental Laws.

4.23 Disclosure. All disclosures provided by Acuity to Parent, Merger Sub I, Merger Sub II and Froptix regarding Acuity, its business and the transactions contemplated hereby, furnished by or on behalf of Acuity are true and correct in all material respects and do not contain any untrue statement of a material fact or omit to

state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF FROPTIX

Except as set forth on the Schedule of Exceptions delivered to Parent in connection with this Agreement, Froptix represents and warrants to Parent as of the date of this Agreement as follows:

5.1 Organization and Standing. Froptix is a corporation duly organized, validly existing and in good standing under the Laws of the State of Florida. Froptix has the requisite corporate power and authority to own and operate its properties and assets, and to carry on its business as currently conducted. Froptix is presently qualified to do business as a foreign corporation in each jurisdiction in which the failure to be so qualified would have a Material Adverse Effect on Froptix. True and accurate copies of the Froptix Articles of Incorporation (the "***Froptix Articles"***) and Froptix By-laws (the "***Froptix By-laws"***), each as in effect as of the date hereof and at the Closing, have been delivered to Parent.

5.2 Corporate Power. Froptix has all requisite legal and corporate power and authority to execute and deliver this Agreement and to carry out and perform its other obligations hereunder.

5.3 Authorization. All action on the part of Froptix, its officers, its directors and its stockholders necessary for the authorization, execution and delivery of this Agreement and the performance of all of Froptix's obligations hereunder has been taken or will be taken prior to or upon the Closing, as applicable. This Agreement has been duly executed by Froptix and, assuming the due authorization, execution and delivery by the other parties hereto, constitutes and will constitute a valid and legally binding obligation of Froptix, except (i) as limited by Laws of general application relating to bankruptcy, insolvency and the relief of debtors and (ii) as limited by rules of Law governing specific performance, injunctive relief or other equitable remedies and by general principles of equity.

5.4 Subsidiaries. Froptix does not own or control, directly or indirectly, any interest in any corporation, partnership, limited liability company, association, other business entity or Person. Froptix is not a participant in any joint venture, partnership or similar arrangement. Since its inception, Froptix has not consolidated or merged with, acquired all or substantially all of the assets of, or acquired the stock of or any interest in any Person.

5.5 Capitalization.

(a) The authorized capital stock of Froptix as of the date hereof and immediately prior to the Closing consists and will consist of 1,000 shares of Froptix Common Stock, nine hundred five (905) of which are issued and outstanding. The

Froptix Common Stock has the rights, preferences, privileges and restrictions set forth in the Froptix Articles and under Florida Law.

(b) All issued and outstanding shares of Froptix's capital stock have been duly authorized and validly issued in compliance with applicable Laws, and are fully paid and nonassessable and free and clear of Liens or third party rights and of any restrictions on transfer, except for transfer restrictions of the federal and state securities laws. To Froptix's knowledge, each holder of any capital stock of Froptix is an "accredited investor" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

(c) There are no options, warrants, preemptive rights, rights of first refusal, put or call rights or obligations or anti-dilution or other rights to purchase or acquire from Froptix any of Froptix's authorized and unissued capital stock. There are no rights to have Froptix's capital stock registered for sale to the public in connection with the Laws of any jurisdiction, no agreements relating to the voting of Froptix's voting securities (except as contemplated hereby) and no restrictions on the transfer of Froptix's capital stock, other than those arising under applicable securities Laws. All outstanding shares, options and warrants were issued pursuant to and in compliance with a valid exemption from registration under the Securities Act and have been issued in compliance with applicable state securities Laws. The exercise price of each option to purchase or acquire from Froptix any of Froptix's authorized and unissued capital stock was intended to constitute a price which is equal to or greater than the fair market value of the underlying shares on the date of grant, as then determined in good faith by the Froptix board of directors.

5.6 Financial Statements. Froptix has delivered to Parent the audited balance sheet of Froptix as of December 31, 2006 (the "***Froptix Financial Statements"***). The Froptix Financial Statements fairly present in all material respects the assets, liabilities and stockholders' equity of Froptix as of the dates, and for the periods, indicated therein, subject to normal year-end audit adjustments, which shall not be material. No event has occurred and nothing has come to the attention of Froptix since December 31, 2006 to indicate that the Froptix Financial Statements did not fairly present in all material respects the assets, liabilities and stockholders' equity of Froptix as of the date thereof. Except as set forth in the Froptix Financial Statements, Froptix has no liabilities of any nature, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to December 31, 2006 that do not exceed, in the aggregate, $50,000, and (ii) obligations under contracts and commitments incurred in the ordinary course of business and not required under GAAP to be reflected in the Froptix Financial Statements, which, individually or in the aggregate, are not material to the financial condition or operating results of Froptix.

5.7 Absence of Certain Changes or Events. Since December 31, 2006, (i) there has been no event, occurrence or development that, individually or in the aggregate, has resulted in or could reasonably be expected to result in a Material Adverse Effect on Froptix or which, if taken after the date hereof, would constitute a breach of the covenants set forth in Section 7.7 or 7.12, (ii) Froptix has not incurred any material

liability, (iii) Froptix has not altered its method of accounting or the identity of its auditor, (iv) Froptix has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock and (v) Froptix has not issued any equity securities. Froptix has not taken any steps to seek protection pursuant to any bankruptcy Law nor does Froptix have any knowledge or reason to believe that its creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact that would reasonably lead a creditor to do so. Froptix is not Insolvent as of the date hereof, and after giving effect to the transactions contemplated hereby to occur at the Closing, will not be Insolvent.

5.8 Material Contracts. A list of the oral and written material agreements of Froptix is set forth on Schedule 5.8 of the Schedule of Exceptions (each, a ***"Froptix Material Agreement"***). Froptix and to Froptix's knowledge, each other party thereto, has in all material respects performed all the obligations required to be performed by them to date (or such non performing party has received a valid, enforceable and irrevocable written waiver with respect to its non performance), has received no notice of default and are not in default (with due notice or lapse of time or both) under any Froptix Material Agreement. Froptix has no knowledge of any breach or anticipated breach by the other party to any Froptix Material Agreement.

5.9 Intellectual Property. Froptix owns or licenses for use (with a right of sublicense) certain Intellectual Property (***"Froptix Intellectual Property"***), which constitute all of the Intellectual Property being all that is necessary for the business of Froptix as presently conducted. To Froptix's knowledge, neither Froptix's material pre-clinical and clinical development candidates and processes to make such candidates, nor any Froptix Intellectual Property, infringe or will infringe on the valid and subsisting Intellectual Property rights of others that Froptix is aware of or, to Froptix's knowledge, any other rights of others. No claim is pending or, to Froptix's knowledge, threatened, alleging any such infringement or with respect to the ownership, validity, license or use of, or any infringement resulting from, either the Froptix Intellectual Property or the sale of any material products or services by Froptix. No loss or expiration of the Froptix Intellectual Property is pending or, to Froptix's knowledge, threatened. The Schedule of Exceptions contains a complete list of the patents and patent applications, trademark applications and registrations, copyright registrations, and domain name registrations within Froptix Intellectual Property. There are no outstanding options, licenses or other agreements relating to the Froptix Intellectual Property, and Froptix is not bound by or a party to any options, licenses or agreements with respect to the Intellectual Property of any other person or entity. Froptix is not violation of any license, sublicense, or other agreements to which it is a party or otherwise bound relating to any Intellectual Property. Froptix is not obligated to make any payments by way of royalties, fees or otherwise to any owner or licensor of or claimant to any Intellectual Property with respect to the use thereof in connection with the conduct of its business as presently conducted. There are no agreements, understandings, instruments, contracts, judgments, orders or decrees to which Froptix is a party or by which it is bound that involve indemnification by Froptix with respect to infringements of Intellectual Property. To Froptix's knowledge, all registrations owned by or on behalf of Froptix, and applications to governmental or

regulatory authorities in respect of such Froptix Intellectual Property, are valid and in full force and effect. To Froptix's knowledge, no other person is infringing on the Froptix Intellectual Property. The Froptix Merger does not and will not materially or adversely affect any rights of Froptix or Surviving Company I to use any material Froptix Intellectual Property.

5.10 Title to Properties and Assets; Liens. Froptix has good and marketable title to its properties and assets, and has good title to all its leasehold interests, in each case subject to no Lien, other than Permitted Liens. With respect to the property and assets it leases, Froptix is in compliance with such leases in all material respects and holds a valid leasehold interest free of all Liens other than Permitted Liens. Froptix's properties and assets are in good condition and repair in all material respects. Froptix does not currently own, and has never owned, any real property.

5.11 Compliance with Other Instruments and Laws. Froptix is not in violation or default of any provision of the Froptix Articles or Froptix By-laws, each as amended and in effect on the date hereof and as of the Closing. Froptix is not in violation of, default under or breach of any provision of any agreement, instrument, mortgage, deed of trust, loan, contract, commitment, judgment, decree, order or obligation to which it is a party or by which it or any of its properties or assets are bound, which violation, default or breach, individually or in the aggregate, would or could reasonably be expected to have a Material Adverse Effect on Froptix. Froptix is not in violation of any provision of any federal, state or local statute, rule or governmental regulation, judgment, injunction or decree of any governmental authority, which violation, individually or in the aggregate, would or could reasonably be expected to have a Material Adverse Effect on Froptix. The execution and delivery of this Agreement by Froptix, and Froptix's performance of and compliance with the terms hereof, or the consummation of the Froptix Merger and the other transactions contemplated hereby, will not result in any violation, breach or default, be in conflict with or constitute, with or without the passage of time or giving of notice, a default under any Froptix Material Agreement or any of the foregoing provisions, require any consent or waiver under any Froptix Material Agreement or any of the foregoing provisions (other than any consents or waivers that have been obtained), result in the creation of any Lien upon any of the properties or assets of Froptix, trigger any right of cancellation, termination or acceleration under any Froptix Material Agreement or any of the foregoing provisions, create any right of payment in any other person or entity (except as set forth herein), or result in a Material Adverse Effect on Froptix.

5.12 Litigation. There is no action, suit, proceeding or investigation pending or, to Froptix's knowledge, threatened against or affecting Froptix or its properties or rights before any court or by or before any governmental agency. Froptix is not a party or subject to, and none of its assets is bound by, the provisions of any order, writ, injunction, judgment or decree of any Governmental Authority. There is no action, suit or proceeding initiated by Froptix currently pending or which Froptix intends to initiate.

5.13 Governmental Consents. No consent, approval or authorization of or registration, qualification, designation, declaration or filing with any governmental

authority on the part of Froptix is required in connection with the valid execution and delivery of this Agreement or the consummation of any transaction contemplated hereby.

5.14 Permits. Froptix has all franchises, permits, licenses, and any similar authority necessary for the conduct of its business as now being conducted by it, and Froptix reasonably believes it can obtain, without undue burden or expense, any similar authority for the conduct of its business as planned to be conducted. Froptix is not in default in any material respect under any of such franchises, permits, licenses, or other similar authority. Froptix has complied in all material respects with all federal, state or foreign Laws applicable to its business.

5.15 Brokers or Finders. Froptix has not engaged any brokers, finders or agents, and Froptix has not incurred, and will not incur, directly or indirectly, as a result of any action taken by Froptix or any of its affiliates, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement and the transactions contemplated hereby.

5.16 Tax Returns and Payments. Froptix has accurately prepared and timely filed all United States income tax returns and all state and municipal tax returns required to be filed by it, if any, has paid all taxes, assessments, fees and charges owed by it (regardless of whether shown on any such tax return) or has otherwise made adequate provision for the payment of all taxes, assessments, fees and charges owed by it. Froptix has withheld or collected from each payment made to each of its employees, the amount of all taxes (including, but not limited to, federal income taxes, Federal Insurance Contribution Act taxes and Federal Unemployment Tax Act taxes) required to be withheld or collected therefrom, and has paid the same to the proper tax receiving officers or authorized depositaries. Froptix has not been advised in writing (a) that any of its returns have been or are being audited or (b) of any deficiency in assessment or proposed adjustment to its federal, state or other taxes. No assessment or proposed adjustment of Froptix's United States income tax or state or municipal taxes is pending. Froptix is not currently the beneficiary of any extension of time within which to file any tax report or return. No claim has been made by a Governmental Authority in a jurisdiction where Froptix does not file reports and returns that it is or may be subject to taxation by that jurisdiction. There are no Liens on any of the assets of Froptix that arose in connection with the failure or alleged failure to pay any tax. Froptix has withheld and paid all taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, creditor, independent contractor or third party. Froptix has not waived any statute of limitations in respect of taxes or agreed to any extension of time with respect to a tax assessment or deficiency. Froptix has not entered into a closing agreement pursuant to Section 7121 of the Code. Froptix has not made any payments, and is not and will not become obligated under any contract entered into on or before the Closing Date to make any payments in connection with the transactions contemplated by this Agreement, or in connection with a combination of the transactions contemplated by this Agreement and any other event, that will be non-deductible under Code Section 280G or subject to the excise tax under Code Section 4999 or that would give rise to any obligation to indemnify any Person for any excise tax payable pursuant to Code Section 4999. Froptix is not a party to or bound by any tax allocation or tax sharing

agreement or has any current or potential obligation to indemnify any other Person with respect to taxes. Except for consolidated income tax liabilities of any wholly-owned corporate subsidiaries it has owned since their inception, Froptix does not have any liability for taxes of any person under Treasury Regulations Section 1.1502-6 (or any corresponding provision of state, local or foreign income tax Law), or as transferee, successor, by contract or otherwise. References in this section to Froptix include references to any and all subsidiaries of Froptix which may affect its liability. Froptix has not participated in any reportable transaction as contemplated in Treasury Regulations Section 1.6011-4.

5.17 Employees. Froptix does not have, and has never had, any employees.

5.18 Employee Benefit Plans. Froptix is not (and has never been) a party to or bound by, does not maintain or contribute to (and has never maintained or contributed to) and has no liability with respect to, any Employee Benefit Plan.

5.19 Obligations to Related Parties. There are no loans, leases, agreements, understandings, commitments or other continuing transactions between Froptix and any employee, officer, director or member of his or her immediate family or stockholder of Froptix or member of his or her immediate family or any person or entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with any of the foregoing persons. To Froptix's knowledge, none of such persons has any direct or indirect ownership interest in any firm or corporation with which Froptix is affiliated or with which Froptix has a business relationship, or any firm or corporation that competes with Froptix, except in connection with the ownership of stock of publicly-traded companies (but not exceeding 2% of the outstanding capital stock of any such company). No employee, officer, director or member of his or her immediate family or, to Froptix's knowledge, stockholder of Froptix or member of his or her immediate family or any person or entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with any of the foregoing persons, is, directly or indirectly, interested in any material contract with Froptix (other than such contracts as relate to any such person's ownership of capital stock or other securities of Froptix). Froptix is not a guarantor or indemnitor of any Indebtedness of any other Person.

5.20 Environmental and Safety Laws. Froptix is in compliance with all applicable environmental Laws, rules and regulations except for noncompliance that, individually or in the aggregate, would not or could not reasonably be expected to have a Material Adverse Effect on Froptix. There is no environmental litigation or other environmental proceeding pending or, to Froptix's knowledge, threatened, by any governmental regulatory authority or others with respect to the business of Froptix. No state of facts exists as to environmental matters or Hazardous Substances that involves the reasonable likelihood of a material capital expenditure by Froptix or that may otherwise have a Material Adverse Effect on Froptix. To Froptix's knowledge, no Hazardous Substances have been used, treated, stored or disposed of, or otherwise deposited, in or on the properties owned or leased by Froptix in violation of any applicable environmental Laws.

5.21 Disclosure. All disclosures provided by Froptix to Parent, Merger Sub I, Merger Sub II and Acuity regarding Froptix, its business and the transactions contemplated hereby, furnished by or on behalf of Froptix are true and correct in all material respects and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

ARTICLE VI
REPRESENTATIONS, WARRANTIES OF THE PARENT, MERGER SUB I AND MERGER SUB II

Except as set forth in the SEC Reports or on the Schedule of Exceptions delivered to Acuity and Froptix in connection with this Agreement, each of Parent, Merger Sub I and Merger Sub II represents and warrants to Acuity and Froptix as of the date of this Agreement as follows:

6.1 Organization and Standing. Parent is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Merger Sub I is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware. Merger Sub II is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware. Each of Parent, Merger Sub I and Merger Sub II has the requisite corporate power and authority to own and operate its properties and assets, and to carry on its business as currently conducted. Parent is presently qualified to do business as a foreign corporation in each jurisdiction in which the failure to be so qualified would have a Material Adverse Effect with respect to Parent. True and accurate copies of Parent's Certificate of Incorporation (the "***Parent Certificate"***), Parent's By-laws (the "***Parent By-laws"***), Merger Sub I's Certificate of Formation (the ***"Merger Sub I Certificate"***), Merger Sub I's Limited Liability Company Agreement (the ***"Merger Sub I LLC Agreement"***), Merger Sub II's Certificate of Formation (the ***"Merger Sub II Certificate"***), Merger Sub II's Limited Liability Company Agreement (the ***"Merger Sub II LLC Agreement"***), each as in effect as of the date hereof and at the Closing, have been delivered to Acuity and Froptix.

6.2 Corporate Power. Each of Parent, Merger Sub I and Merger Sub II has all requisite legal and corporate and other power and authority to execute and deliver this Agreement and to carry out and perform its other obligations hereunder.

6.3 Authorization. All corporate and other action on the part of each of Parent, Merger Sub I and Merger Sub II, their respective officers and directors necessary for the (i) due authorization, execution and delivery of this Agreement and (ii) performance of all obligations of Parent, Merger Sub I and Merger Sub II hereunder has been taken or will be taken prior to or upon the Closing, as applicable. All corporate action on the part of the sole member of each of Merger Sub I and Merger Sub II necessary for the (i) due authorization, execution and delivery of this Agreement and (ii) performance of all obligations of Merger Sub I and Merger Sub II hereunder has been taken or will be taken prior to the Closing, as applicable. This Agreement has been duly executed by each of

Parent, Merger Sub I and Merger Sub II and, assuming the due authorization, execution and delivery by the other parties hereto, constitutes and will constitute a valid and legally binding obligation of each of Parent, Merger Sub I and Merger Sub II, except (i) as limited by Laws of general application relating to bankruptcy, insolvency and the relief of debtors and (ii) as limited by rules of Law governing specific performance, injunctive relief or other equitable remedies and by general principles of equity.

6.4 Authorized Securities. The shares of Parent Common Stock and Parent Series C Preferred Stock issuable pursuant to Section 3.1(a), Section 3.3(a), Section 3.3(b), and Section 3.3(c) shall be duly authorized and, when issued in accordance with this Agreement, will be duly and validly issued, fully paid and non-assessable, free and clear of all Liens and shall not be subject to preemptive or similar rights of stockholders. The Adjusted Parent Options, Adjusted Parent Series C Options and Parent Warrants shall be duly issued and authorized when issued in accordance with this Agreement and any share of Parent Common Stock or Parent Series C Preferred Stock issued upon the exercise thereof according to their respective terms, as applicable, will be duly and validly issued, fully paid and non-assessable, free and clear of all Liens and shall not be subject to preemptive or similar rights of stockholders.

6.5 Subsidiaries. Other than its interest in Merger Sub I and Merger Sub II, Parent does not own or control, directly or indirectly, any interest in any corporation, partnership, limited liability company, association, other business entity or person. Parent is not a participant in any joint venture, partnership or similar arrangement. Parent has not during the period covered by the SEC Reports consolidated or merged with, acquired all or substantially all of the assets of, or acquired the stock of or any interest in any Person.

6.6 Capitalization.

(a) The authorized capital stock of Parent on the date hereof consists of 225,000,000 shares of Parent Common Stock, of which 36,505,369 shares of Common Stock are issued and outstanding, and 10,000,000 shares of Parent Preferred Stock, of which 4,000,000 are designated Parent Series A Preferred Stock and of which 30,000 are designated Series B Junior Participating Preferred Stock pursuant to the Parent Certificate as of the date hereof. As of the date of this Agreement, 1,083,404 shares of Parent Series A Preferred Stock were issued and outstanding and convertible into Parent Common Stock on a one-for-one basis, and no shares of Parent Series B Preferred were issued or outstanding. The Parent Common Stock and the Parent Preferred Stock have the rights, preferences, privileges and restrictions set forth in the Parent Certificate and under Delaware Law. All issued and outstanding shares of Parent's capital stock have been duly authorized and validly issued in compliance with applicable Laws, and are fully paid and nonassessable and free and clear of Liens or third party rights and of any restrictions on transfer, except for transfer restrictions of the federal and state securities laws.

(b) There are no options, warrants, preemptive rights, rights of first refusal, put or call rights or obligations or anti-dilution or other rights to purchase or acquire from Parent any of Parent's authorized and unissued capital stock. Except as

contemplated by this Agreement, there are (i) no rights to have Parent's capital stock registered for sale to the public in connection with the Laws of any jurisdiction, (ii) to the Parent's knowledge, no agreements relating to the voting of Parent's voting securities and (iii) no restrictions on the transfer of Parent's capital stock or other equity securities, other than those arising under applicable securities Laws. All outstanding shares, options and warrants were issued pursuant to a valid registration statement filed with the SEC or an exemption from registration under the Securities Act and have been issued in compliance with applicable state securities Laws.

6.7 SEC Reports; Financial Statements. Parent has duly filed all required registration statements, reports, schedules, forms, statements and other documents (including exhibits and all other information incorporated by reference) required to be filed by it with the SEC under the Exchange Act, including pursuant to Sections 13(a) or 15(d) thereof, for the two years preceding the date hereof (the foregoing materials (together with any materials filed by Parent under the Exchange Act, whether or not required) being collectively referred to herein as the "***SEC Reports"***) on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act and the rules and regulations of the SEC promulgated thereunder, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The financial statements of Parent included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with GAAP, except as may be otherwise specified in such financial statements or the notes thereto, and fairly present in all material respects the financial condition, results of operations and cash flows of Parent as of the dates, and for the periods, indicated therein, subject, in the case of unaudited statements, to normal, year-end audit adjustments.

6.8 Absence of Changes. Since the date of the latest audited financial statements included within the SEC Reports, except as disclosed in the SEC Reports or in Schedule 6.8 of the Schedule of Exceptions or incident to the transactions contemplated hereby or in connection with the Mergers, (i) there has been no event, occurrence or development that, individually or in the aggregate, has had or that would reasonably be expected to result in a Material Adverse Effect on Parent, or which, if taken after the date hereof, would constitute a breach of the covenants set forth in Section 7.7 or 7.12, (ii) Parent has not incurred any material liabilities, (iii) Parent has not altered its method of accounting or the identity of its auditors, except as disclosed in its SEC Reports, (iv) Parent has not declared or made any dividend or distribution of cash or other property to its stockholders, in their capacities as such, or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock and (v) Parent has not issued any equity securities. Parent has not taken any steps to seek protection pursuant to any bankruptcy Law nor does Parent have any knowledge or reason to believe that its creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge

of any fact that would reasonably lead a creditor to do so. Parent is not Insolvent as of the date hereof, and after giving effect to the transactions contemplated hereby to occur at the Closing, will not be Insolvent.

6.9 Sarbanes-Oxley Act. The Parent and, to Parent's knowledge, each of its officers and directors are in compliance with, and have complied, in each case in all material respects, with the applicable provisions of the Sarbanes-Oxley Act of 2002 (the "***Sarbanes-Oxley Act"***) and the related rules and regulations promulgated under or pursuant to the Exchange Act. Each SEC Report containing financial statements that has been filed with or submitted to the SEC by Parent was accompanied by the certifications required to be filed or submitted by the Parent's chief executive officer and/or chief financial officer, as required, pursuant to the Exchange Act and, at the time of filing or submission of each such certification, such certification was true and accurate and complied in all material respects with the Exchange Act. Neither Parent nor, to Parent's knowledge, any of its executive officers has received notice from any Governmental Authority challenging or questioning the accuracy, completeness, form or manner of filing such certifications.

6.10 Internal Controls. Neither Parent (including, to Parent's Knowledge, any employee thereof) nor the Parent's independent auditors has identified or been made aware of (A) any significant deficiency or material weakness in the design or operation of internal controls utilized by Parent (other than a significant deficiency or material weakness that has been disclosed to the Audit Committee of the Board of Directors of Parent, and, in the case of a material weakness, that has been disclosed as required in the SEC Reports), (B) any fraud, whether or not material, that involves Parent's management or other employees who have a significant role in the preparation of financial statements or the internal controls utilized by Parent or (C) any claim or allegation regarding any of the foregoing (other than claims or allegations that have been duly investigated and found not to involve any of the foregoing).

6.11 Material Contracts. A list of the oral and written material agreements of Parent are included as exhibits to the SEC Reports (each, a "***Parent Material Agreement"***). Parent and to Parent's knowledge, each other party thereto, has in all material respects performed all the obligations required to be performed by them to date (or such non performing party has received a valid, enforceable and irrevocable written waiver with respect to its non performance), has received no notice of default and are not in default (with due notice or lapse of time or both) under any Parent Material Agreement. Parent has no knowledge of any breach or anticipated breach by the other party to any Parent Material Agreement.

6.12 Title to Properties and Assets; Liens. Parent has good and marketable title to its properties and assets, and has good title to all its leasehold interests, in each case subject to no Lien, other than Permitted Liens. With respect to the property and assets it leases, Parent is in compliance with such leases in all material respects and holds a valid leasehold interest free of all Liens. Parent's properties and assets are in good condition and repair in all material respects. Parent does not currently own, and has never owned, any real property.

6.13 Compliance with Other Instruments and Laws. Parent is not in violation or default of any provision of the Parent Certificate or the Parent By-laws, each as amended and in effect on the date hereof and as of the Closing. Parent is not in violation of, default under or breach of any provision of any agreement, instrument, mortgage, deed of trust, loan, contract, commitment, judgment, decree, order or obligation to which it is a party or by which it or any of its properties or assets are bound, which violation, default or breach, individually or in the aggregate, would or could reasonably be expected to have a Material Adverse Effect on Parent. Parent is not in violation of any provision of any federal, state or local statute, rule or governmental regulation, judgment, injunction or decree of any governmental authority, which violation, individually or in the aggregate, would or could reasonably be expected to have a Material Adverse Effect on Parent. The execution and delivery of this Agreement by Parent, and Parent's performance of and compliance with the terms hereof, or the consummation of the Merger and the other transactions contemplated hereby, will not result in any violation, breach or default, be in conflict with or constitute, with or without the passage of time or giving of notice, a default under any Parent Material Agreement or any of the foregoing provisions, require any consent or waiver under any Parent Material Agreement or any of the foregoing provisions (other than any consents or waivers that have been obtained), result in the creation of any Lien upon any of the properties or assets of Parent, trigger any right of cancellation, termination or acceleration under any Parent Material Agreement or any of the foregoing provisions, create any right of payment in any Person (except as contemplated herein), or result in a Material Adverse Effect on Parent.

6.14 Litigation. There is no action, suit, proceeding or investigation pending or, to Parent's knowledge, threatened against or affecting Parent, Merger Sub I, Merger Sub II or any of their respective properties or rights before any court or by or before any governmental agency. None of Parent, Merger Sub I, or Merger Sub II is party or subject to, and none of their respective assets is bound by, the provisions of any order, writ, injunction, judgment or decree of any Governmental Authority. There is no action, suit or proceeding initiated by Parent currently pending or which Parent intends to initiate.

6.15 Governmental Consents. No consent, approval or authorization of or registration, qualification, designation, declaration or filing with any governmental authority on the part of Parent is required in connection with the valid execution and delivery of this Agreement or the consummation of any transaction contemplated hereby, except the qualification or registration (or taking such action as may be necessary to secure an exemption from qualification or registration, if available) of the offer, issuance and sale of the shares of Parent Common Stock, Parent Series C Preferred Stock, Adjusted Parent Options, Adjusted Parent Series C Options, Parent Warrants and the securities of Parent issuable upon conversion or exercise of the Parent Series C Preferred Stock, Adjusted Parent Options, Adjusted Parent Series C Options or Parent Warrants under applicable federal and state securities Laws.

6.16 Permits. Parent has all franchises, permits, licenses, and any similar authority necessary for the conduct of its business as now being conducted by it. Parent is not in default in any material respect under any of such franchises, permits, licenses, or

other similar authority. Parent has complied in all material respects with all federal, state or foreign Laws applicable to its business.

6.17 Brokers or Finders. Parent has not engaged any brokers, finders or agents, and Parent has not incurred, and neither will incur, directly or indirectly, as a result of any action taken by Parent or any of its affiliates, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement and the transactions contemplated hereby.

6.18 Tax Returns and Payments. Merger Sub I and Merger Sub II are treated as disregarded entities, as defined in Treasury Regulations Section 301.7701(a)-2, for federal income tax purposes. Parent has accurately prepared and timely filed all United States income tax returns and all state and municipal tax returns required to be filed by it, if any, has paid all taxes, assessments, fees and charges owed by it (regardless of whether shown on any such tax return) or has otherwise made adequate provision for the payment of all taxes, assessments, fees and charges owed by it. Parent has withheld or collected from each payment made to each of its employees, the amount of all taxes (including, but not limited to, federal income taxes, Federal Insurance Contribution Act taxes and Federal Unemployment Tax Act taxes) required to be withheld or collected therefrom, and has paid the same to the proper tax receiving officers or authorized depositaries. Parent has not been advised in writing (a) that any of its returns have been or are being audited or (b) of any deficiency in assessment or proposed adjustment to its federal, state or other taxes. No assessment or proposed adjustment of Parent's United States income tax or state or municipal taxes is pending. Parent is not currently the beneficiary of any extension of time within which to file any tax report or return. No claim has been made by a Governmental Authority in a jurisdiction where Parent does not file reports and returns that it is or may be subject to taxation by that jurisdiction. There are no Liens on any of the assets of Parent that arose in connection with the failure or alleged failure to pay any tax. Parent has withheld and paid all taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, creditor, independent contractor or third party. Parent has not waived any statute of limitations in respect of taxes or agreed to any extension of time with respect to a tax assessment or deficiency. Parent has not entered into a closing agreement pursuant to Section 7121 of the Code. Parent has not made any payments, and is not and will not become obligated under any contract entered into on or before the Closing Date to make any payments, in connection with the transactions contemplated by this Agreement, or in connection with a combination of the transactions contemplated by this Agreement and any other event, that will be non-deductible under Code Section 280G or subject to the excise tax under Code Section 4999 or that would give rise to any obligation to indemnify any person for any excise tax payable pursuant to Code Section 4999. Parent is not a party to or bound by any tax allocation or tax sharing agreement or has any current or potential obligation to indemnify any other person with respect to taxes. Except for consolidated income tax liabilities of any wholly-owned corporate subsidiaries it has owned since their inception, Parent does not have any liability for taxes of any person under Treasury Regulations Section 1.1502-6 (or any corresponding provision of state, local or foreign income tax Law), or as transferee, successor, by contract or otherwise. References in this Section to Parent include references to any and all subsidiaries of Parent that may affect its liability.

Parent has not participated in any reportable transaction as contemplated in Treasury Regulations Section 1.6011-4.

6.19 Employees. To Parent's knowledge, no employee of Parent, nor any consultant with whom Parent has contracted, is in violation of any term of any employment contract, noncompetition or proprietary information agreement or any other agreement relating to the right of any such individual to be employed by, or to contract with, Parent or any judgment, decree or order of any court or administrative agency under which it is subject. Parent has not received any notice alleging that any such violation has occurred. Parent is not in default with respect to any obligation to any of its employees. No employee of Parent is represented by any labor union or covered by any collective bargaining agreement. There is no pending or, to Parent's knowledge, threatened dispute involving Parent and any employee or group of its employees. Parent has complied and is currently complying with all applicable Laws relating to employment and employment practices, terms and conditions of employment, and wages and hours, except for noncompliance that, individually and in the aggregate, would not have a Material Adverse Effect on Parent.

6.20 Employee Benefit Plans.

(a) Schedule 6.20 of the Schedule of Exceptions sets forth a correct and complete list of all Parent Employee Benefit Plans. Each Parent Employee Benefit Plan, and its related documents, has been made available to Froptix and Acuity. No Parent Employee Benefit Plan is subject to Title IV of ERISA, or Section 412 of the Code, is or has been subject to Sections 4063 or 4064 of ERISA, or is a multi-employer welfare arrangement as defined in Section 3(40) of ERISA. Neither Parent nor any ERISA Affiliate has any obligation or liability, contingent or otherwise, under Title IV of ERISA with respect to any "pension plan" as defined in Section 3(2) of ERISA. Neither Parent nor any of it ERISA Affiliates has ever participated in and has never been required to contribute to any "multi employer plan," as defined in Sections 3(37)(A) and 4001(a)(3) of ERISA and Section 414(f) of the Code or any "multiple employer plan" within the meaning of Section 210(a) of ERISA or Section 413(c) of the Code. No Parent Employee Benefit Plan provides for, nor does Parent or any of its subsidiaries have any liability for post-employment life insurance or health benefit coverage for any participant or any beneficiary of a participant, except as may be required under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and at the expense of the participant or the participant's beneficiary.

(b) The Parent Employee Benefit Plans have been maintained in all material respects in accordance with their terms and with all provisions of ERISA, the Code (including rules and regulations thereunder) and other applicable federal and state Laws and regulations. The exercise price of each option to purchase or acquire from Parent any of Parent's authorized and unissued capital stock was intended to constitute a price which is equal to or greater than the fair market value of the underlying shares on the date of grant, as then determined in good faith by the Parent board of directors.

(c) There are no pending actions, claims or lawsuits that have been asserted or instituted against any Parent Employee Benefit Plan, the assets of any of the trusts under any Parent Employee Benefit Plan or the sponsor of any Parent Employee Benefit Plan, or, to the knowledge of Parent, against any fiduciary or administrator of any Parent Employee Benefit Plan with respect to the operation of any Parent Employee Benefit Plan (other than routine benefit claims), nor does Parent have any knowledge of facts that could reasonably be expected to form the basis for any such claim or lawsuit.

(d) Neither will the execution and delivery of this Agreement nor the consummation of the transactions contemplated herein (i) result in any payment becoming due to any current or former employee, officer, director or consultant of Parent or any of its subsidiaries, (ii) increase any benefits otherwise payable under any Parent Employee Benefit Plan, (iii) result in the acceleration of the time of payment or vesting of any rights with respect to any such benefits under any Parent Employee Benefit Plan or (iv) require any contributions or payments to fund, or any security to secure, any obligations under any Parent Employee Benefit Plan. There are no Parent Employee Benefit Plans that, individually or collectively, could give rise to the payment of any amount in connection with the transactions contemplated by this Agreement, or in connection with a combination of the transactions contemplated by this Agreement and any other event, that would not be deductible pursuant to the terms of Section 280G of the Code.

(e) With respect to each Parent Employee Benefit Plan intended to qualify under Code Section 401(a) or 403(a), (i) the Internal Revenue Service has issued a favorable determination letter, which has not been revoked, that any such plan is tax-qualified and each trust created thereunder has been determined by the Internal Revenue Service to be exempt from federal income tax under Code Section 501(a); (ii) nothing has occurred or will occur through the Closing which would cause the loss of such qualification or exemption or the imposition of any penalty or tax liability; (iii) no reportable event (within the meaning of Section 4043 of ERISA) has occurred; (iv) there has been no termination or partial termination of such plan within the meaning of Code Section 411(d)(3); and (v) the present value of all liabilities under any such plan will not exceed the current fair market value of the assets of such plan (determined using the actuarial assumption used for the most recent actuarial valuation for such plan).

6.21 Obligations to Related Parties. There are no loans, leases, agreements, understandings, commitments or other continuing transactions between Parent and any employee, officer, director or member of his or her immediate family or stockholder of Parent or member of his or her immediate family or any person or entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with any of the foregoing persons. To Parent's knowledge, none of such persons has any direct or indirect ownership interest in any firm or corporation with which Parent is affiliated or with which Parent has a business relationship, or any firm or corporation that competes with Parent, except in connection with the ownership of stock of publicly-traded companies (but not exceeding 2% of the outstanding capital stock of any such company). No employee, officer, director or member of his or her immediate family or, to Parent's knowledge, stockholder of Parent or member of his or her

immediate family or any person or entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with any of the foregoing persons, is, directly or indirectly, interested in any material contract with Parent (other than such contracts as relate to any such person's ownership of capital stock or other securities of Parent or employment by Parent). Parent is not a guarantor or indemnitor of any Indebtedness of any other Person.

6.22 Insurance. Parent has in full force and effect general commercial, fire and casualty insurance policies and insurance against other hazards, risks and liabilities to persons and property to the extent and in the manner customary for companies in similar businesses similarly situated and sufficient in amount to allow it to replace any of its material properties or assets that might be damaged or destroyed or sufficient to cover liabilities to which Parent may reasonably become subject.

6.23 Environmental and Safety Laws. Parent is in compliance with all applicable environmental Laws, rules and regulations except for noncompliance that, individually or in the aggregate, would not or could not reasonably be expected to have a Material Adverse Effect on Parent. There is no environmental litigation or other environmental proceeding pending or, to Parent's knowledge, threatened, by any governmental regulatory authority or others with respect to the business of Parent. No state of facts exists as to environmental matters or Hazardous Substances that involves the reasonable likelihood of a material capital expenditure by Parent or that may otherwise have a Material Adverse Effect on Parent. To Parent's knowledge, no Hazardous Substances have been used, treated, stored or disposed of, or otherwise deposited, in or on the properties owned or leased by Parent in violation of any applicable environmental Laws.

6.24 No Assets; No Liabilities . Except as specifically disclosed in the SEC Reports, neither Parent, Merger Sub I nor Merger Sub II has the right to own, or will have the right to own prior to the Closing, any assets (including without limitation, tangible and intangible, personal and real property) and neither is involved in the operation of any business or property. Other than as specifically disclosed in the SEC Reports and those liabilities related to this Agreement set forth in the Schedule of Exceptions, neither Parent, Merger Sub I nor Merger Sub II has any direct or indirect material liability, Indebtedness or obligation (including without limitation, known or unknown, absolute or contingent, liquidated or unliquidated or due or to become due) except relating to the transactions contemplated hereby.

6.25 Application of Takeover Protections. There are no Takeover Protections that are or could reasonably be expected to become applicable to Parent as a result of Parent, Merger Sub I, Merger Sub II, Froptix or Acuity fulfilling their obligations or exercising their rights under this Agreement, including, without limitation, as a result of Parent's issuance of the shares of Parent Common Stock and Parent Series C Preferred Stock issuable pursuant to Section 3.1(a), Section 3.3(a), Section 3.3(b), and Section 3.3(c) or any other warrant or option as specified in this Agreement.

6.26 Disclosure. All disclosures provided by Parent, Merger Sub I and Merger Sub II to Froptix and Acuity regarding Parent, Merger Sub I and Merger Sub II, their respective businesses and the transactions contemplated hereby, furnished by or on behalf of Parent, Merger Sub I and Merger Sub II are true and correct in all material respects and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. To Parent's, Merger Sub I's and Merger Sub II's knowledge, no event or circumstance has occurred or information exists with respect to Parent, Merger Sub I or Merger Sub II or their respective business, properties, operations or financial conditions, which, under applicable Law, rule or regulation, requires public disclosure or announcement by Parent but which has not been so publicly announced or disclosed.

6.27 Operations of Merger Sub I and Merger Sub II. Each of Merger Sub I and Merger Sub II is a direct, wholly owned subsidiary of Parent, was formed solely for the purpose of engaging in the transactions contemplated by this Agreement, has engaged in no other business activities and has conducted its operations only as contemplated by this Agreement.

6.28 Trading Matters. The Parent Common Stock is quoted on the OTCBB. There is no action or proceeding pending or, to Parent's knowledge, threatened against Parent by Nasdaq or NASD, Inc. with respect to any intention by such entities to prohibit or terminate the quotation of any such securities on the OTCBB.

ARTICLE VII
ADDITIONAL AGREEMENTS

7.1 Publicity. Until the Acuity Merger Effective Time, no party shall issue any press release or public announcement pertaining to the Mergers that has not been agreed upon in advance by Parent, Froptix and Acuity, except as Parent reasonably determines to be necessary in order to comply with the rules of the SEC or the OTCBB.

7.2 Tax Free Exchange. Each of Parent, Froptix and Acuity shall use its respective commercially reasonable efforts to cause the Mergers to qualify as a reorganization described in Section 368(a) of the Code and will not take any actions that would reasonably be expected to cause the Mergers to not so qualify. For purposes of the foregoing, this Agreement shall constitute a plan of reorganization.

7.3 Transaction Form 8-K; Other Filings. As promptly as practicable (but in no event, with respect to filing, later than the date required under applicable Law), Parent will prepare and file a current report on Form 8-K (the "Transaction Form 8-K") and any filings required to be filed by it under the Exchange Act, the Securities Act or any other federal or blue sky or related Laws relating to the execution of this Agreement and the consummation of the Mergers, as well as under regulations of or as required by the OTCBB and such Governmental Authorities as may require the filing of such other filings. Froptix and Acuity will work together with Parent as promptly as practicable to

prepare the Transaction Form 8-K and other filings referred to above and provide Parent whatever information is necessary to accurately complete such filings in a timely manner.

7.4 Notices from or to Governmental Authorities. Subject to applicable Laws relating to the exchange of information, each party will promptly furnish to the other parties copies of written communications (and memoranda setting forth the substance of all oral communications) received by such party, or any of their respective subsidiaries, affiliates or associates (as such terms are defined in Rule 12b-2 under the Exchange Act as in effect on the date hereof), from, or delivered by any of the foregoing to, any Governmental Authority relating to or in respect of the transactions contemplated under this Agreement.

7.5 Parent Directors. Parent shall use its best efforts to cause the "Director Nominees" to be elected as members of the Parent board of directors by the existing members of the Parent board of directors simultaneous with Closing (to the extent that they are not already serving in such capacity). Each Director Nominee shall serve as a director for a term expiring at Parent's next annual meeting of stockholders following the Closing Date and until his successor is elected and qualified, provided that Parent shall use its best efforts to cause the Parent board of directors to re-nominate each Director Nominee as a director for election at the Parent's annual meeting of stockholders for each of 2007 and 2008 subject to any limitations imposed by applicable Law or the rules of the Eligible Market. Parent shall take such action, including amending its bylaws, as may be required to cause the number of directors constituting the Parent board of directors immediately after the Closing Date to be increased to eight. "***Director Nominees***" means Philip Frost, Jane H. Hsiao, Steven D. Rubin, David A. Eichler and Michael Reich.

7.6 Indemnification and D&O Insurance.

(a) From and after the Closing, Parent will cause Surviving Company I to fulfill and honor in all material respects the obligations of Froptix pursuant to any indemnification provisions under the Froptix Articles and Froptix By-laws for the benefit of any individual who served as a director or officer of Froptix (the ***"Froptix Indemnitees"***) at any time prior to the Froptix Merger Effective Time to the maximum extent permitted by Law.

(b) From and after the Closing, Parent will cause Surviving Company II to fulfill and honor in all material respects the obligations of Acuity pursuant to any indemnification provisions under the Acuity Certificate and Acuity By-laws for the benefit of any individual who served as a director or officer of Acuity (the ***"Acuity Indemnitees"***) at any time prior to the Acuity Merger Effective Time to the maximum extent permitted by Law.

(c) Parent will provide each Froptix Indemnitee and Acuity Indemnitee with liability insurance for a period of 24 months after such Froptix Merger Effective Time or Acuity Merger Effective Time, as applicable, on terms no less favorable in coverage and amount than any applicable insurance in effect immediately prior to such Froptix Merger Effective Time or Acuity Merger Effective Time; *provided,*

however, that Parent may reduce the coverage and amount of liability insurance for the Froptix Indemnitees to the extent the cost of liability insurance having the full coverage and amount for such indemnitees would exceed 120% of the cost of such coverage as of the date hereof and may reduce the coverage and amount of liability insurance for the Acuity Indemnitees to the extent the cost of liability insurance having the full coverage and amount for such indemnitees would exceed 120% of the cost of such coverage as of the date hereof.

7.7 Covenants Relating To Conduct Of Business. During the period from the date of this Agreement to the Acuity Merger Effective Time, each of Parent, Merger Sub I, Merger Sub II, Froptix and Acuity shall:

(a) conduct its business only in the ordinary course and consistent with prudent and prior business practice, except for transactions permitted hereunder, or with the prior written consent of the other parties, which consent will not be unreasonably withheld; and

(b) confer on a reasonable basis with each other regarding operational matters and other matters related to the Mergers.

7.8 Access to Parent, Merger Sub I and Merger Sub II. Parent shall afford to Acuity and Froptix and their respective officers, directors, agents and counsel access at times and upon conditions reasonably convenient to Parent to all properties, books, records, contracts and documents of Parent, Merger Sub I and Merger Sub II, and an opportunity to make such investigations as they shall reasonably desire to make of Parent, Merger Sub I and Merger Sub II; and Parent shall furnish or cause to be furnished to Acuity and Froptix and their authorized representatives all such information with respect to the business and affairs of Parent, Merger Sub I and Merger Sub II as Acuity and Froptix and their authorized representatives may reasonably request and make the officers, directors, employees, auditors and counsel of Parent, Merger Sub I and Merger Sub II available for consultation and permit access to other third parties as reasonably requested by Froptix or Acuity for verification of any information so obtained.

7.9 Access to Froptix. Froptix shall afford to Parent and its officers, directors, agents and counsel access at times and upon conditions reasonably convenient to Froptix to all properties, books, records, contracts and documents of Froptix, and an opportunity to make such investigations as it shall reasonably desire to make of Froptix; and Froptix shall furnish or cause to be furnished to Parent and its authorized representatives all such information with respect to the business and affairs of Froptix as Parent and its authorized representatives may reasonably request and make the officers, directors, employees, auditors and counsel of Froptix available for consultation and permit access to other third parties as reasonably requested by Parent for verification of any information so obtained.

7.10 Access to Acuity. Acuity shall afford to Parent and its officers, directors, agents and counsel access at times and upon conditions reasonably convenient to Acuity and to all properties, books, records, contracts and documents of Acuity, and an opportunity to make such investigations as it shall reasonably desire to make of Acuity;

and Acuity shall furnish or cause to be furnished to Parent and its authorized representatives all such information with respect to the business and affairs of Acuity as Parent and its authorized representatives may reasonably request and make the officers, directors, employees, auditors and counsel of Acuity available for consultation and permit access to other third parties as reasonably requested by Parent for verification of any information so obtained.

7.11 Confidentiality Agreement. Each of Parent, Froptix and Acuity acknowledge and agree that any information received pursuant to Sections 7.8, 7.9 and/or 7.10 shall be subject to the terms of the Confidentiality Agreement by and among Parent, Froptix and Acuity dated February 27, 2007 (the "***Confidentiality Agreement"***).

7.12 Prohibited Actions Pending Closing. Except as provided in this Agreement or as disclosed in the Schedule of Exceptions or to the extent Parent, Acuity and Froptix shall otherwise consent in writing, during the period from the date of this Agreement to the Acuity Merger Effective Time, none of Parent, Merger Sub I, Merger Sub II, Froptix or Acuity shall:

(a) create any Lien on any of its properties or assets (whether tangible or intangible), other than (A) Permitted Liens and (B) Liens that will be released at or prior to or in connection with the Closing.

(b) sell, assign, transfer, lease or otherwise dispose of or agree to sell, assign, transfer, lease or otherwise dispose of any its assets or cancel any Indebtedness owed to it.

(c) change any method of accounting or accounting practice used by it, other than such changes required by GAAP.

(d) issue or sell any shares of the capital stock of, or other equity interests in it, or securities convertible into or exchangeable for such shares or equity interests, or issue or grant any options, warrants, calls, subscription rights or other rights of any kind to acquire additional shares of such capital stock, such other equity interests or such securities.

(e) amend or otherwise change their respective Articles or Certificate of Incorporation, as the case may be, or other governing documents;

(f) declare, set aside or pay any dividend or distribution with respect to any share of its capital stock or declare or effectuate a stock dividend, stock split or similar event.

(g) issue any note, bond, or other debt security or create, incur, assume, or guarantee any Indebtedness for borrowed money or capitalized lease obligation.

(h) make any capital investment in, make any loan to, or acquire the securities or assets of any other person or entity.

(i) enter into any new or additional agreements or materially modify any existing agreements relating to the employment of any officer or any written agreements of any of its employees, except in the ordinary course of business.

(j) make any payments out of the ordinary course of business to any of its officers, directors, employees or stockholders.

(k) Pay, discharge, satisfy or settle any liability (absolute, accrued, asserted or unasserted, contingent or otherwise).

(l) Sell, transfer, license, abandon, let lapse, encumber or otherwise dispose of any Intellectual Property.

(m) Agree in writing or otherwise take any action that would, or would reasonably be expected to, prevent, impair or materially delay the ability of Parent, Froptix or Acuity, as the case may be, to consummate the transactions contemplated by this Agreement.

(n) agree to take any of the actions specified in this Section 7.12.

7.13 Further Assurances. Subject to the terms and conditions herein provided, each of the parties hereto agrees to use its commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws and regulations to satisfy the conditions to Closing to be satisfied by it and to consummate and make effective the transactions contemplated by this Agreement and make effective, in the most expeditious manner practicable, including, without limitation, using commercially reasonable efforts to lift or rescind any injunction or restraining order or other order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement and using commercially reasonable efforts to prevent the breach of any representation, warranty, covenant or agreement of such party contained or referred to in this Agreement and to promptly remedy the same. In case at any time after the Acuity Merger Effective Time any further action is necessary or desirable to carry out the purposes of this Agreement, each party to this Agreement shall use commercially reasonable efforts to take all such necessary action.

7.14 Initial Listing Application. As soon as practicable after the Closing Date, Parent shall use its commercially reasonable efforts, to the extent allowed under the rules of the Eligible Market, to take all actions and prepare all filings and other documents necessary to be filed with the Eligible Market in connection with the initial listing application for the inclusion of the Parent Common Stock on the Eligible Market, conduct ongoing negotiations with the Eligible Market with respect to such listing and perform all acts reasonably requested by the Eligible Market.

7.15 Master Agreement Line of Credit. At the Acuity Merger Effective Time, (a) Acuity shall assign and Parent shall assume and succeed to all of Acuity's rights and obligations under that certain Master Agreement, dated as of January 11, 2007, by and among Acuity, Froptix and The Frost Group, LLC (the ***"Master Agreement"***) which

survive the Acuity Merger Effective Time to the extent set forth therein, and such Master Agreement shall be amended as set forth therein (as attached hereto as Exhibit H), (b) Acuity shall assign and Parent shall assume and succeed to Acuity's obligations under the Note delivered by Acuity under the Master Agreement, which shall be amended and restated as set forth in the Master Agreement, and (c) Parent shall grant the Parent Warrants to The Frost Group, LLC as may be required to be issued pursuant to the Master Agreement upon the assumption described in this Section 7.15.

7.16 Lockup Agreements.

(a) Froptix shall cause each Froptix Shareholder who owns more than 5% of the Froptix Shares on the date of this Agreement to deliver to Parent and Acuity an executed lockup letter agreement substantially in the form of Exhibit F hereto prior to the Froptix Merger Effective Time (the "***Froptix Lockup Agreements"***).

(b) Acuity shall cause each Acuity Stockholders who owns more than 5% of the Acuity Shares on the date of this Agreement to deliver to Parent and Froptix an executed lockup letter agreement substantially in the form of Exhibit F hereto prior to the Acuity Merger Effective Time (the "***Acuity Lockup Agreements"***).

7.17 Notices and Consents. Each of Parent, Acuity and Froptix will give any notices to third parties, and will use its commercially reasonable efforts to obtain any third party consents referred to in the Schedule of Exceptions delivered by it hereunder.

7.18 Accredited Investor Representations. Acuity shall use its reasonable best efforts to obtain a representation from each Acuity Shareholder and each holder of warrants to acquire Acuity capital stock and Acuity Options, dated as of a recent date, that (a) he, she or it is an "accredited investor" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act or (b) if not, he, she or it, either alone or together with his, her or its purchaser representative(s), has such knowledge and experience in financial and business matters that he, she or it is capable of independently evaluating the risks and merits of acquiring the Parent Common Stock, Parent Series C Preferred Stock, Adjusted Parent Options, Adjusted Parent Series C Options and/or Parent Warrants to be delivered hereunder, and in either case to deliver such representation to Parent at or prior to the Acuity Merger Effective Time.

7.19 Consents from Certain Holders of Acuity Options.

(a) Acuity shall, prior to the effective time of the Acuity Merger, enter into an agreement, in a form acceptable to Parent, Froptix and Acuity, with each of the Persons set forth on Schedule 7.19 of the Schedule of Exceptions, each of whom is a director or employee of Acuity that is a holder of one or more unvested options to purchase Acuity capital stock that would become vested partially or in full as a result of the Acuity Merger, to cause such acceleration provision to be waived in connection with the Acuity Merger. Such agreement shall also contain a provision which states that if as a result of the accelerated vesting described above, the employee is considered to have received parachute payments (as defined by Section 280G of the Code) that exceed the

amount that such Person is entitled to receive without paying an excise tax, then the unvested options will not become vested.

(b) Acuity shall use its reasonable best efforts, prior to the effective time of the Acuity Merger, to enter into an agreement with each other Person who is a holder of one or more unvested options to purchase Acuity capital stock that would become vested in full as a result of the Acuity Merger, to cause such acceleration provision to be waived in connection with the Acuity Merger.

7.20 No Additional Representations or Warranties. Each of Parent, Merger Sub I, Merger Sub II, Acuity and Froptix acknowledge that the others have not made any representation, warranty or covenant, express or implied, as to the accuracy or completeness of any information regarding any of them, except as expressly set forth in this Agreement or the Schedule of Exceptions. SUBJECT TO ANY RIGHTS ANY PARTY MAY HAVE UNDER LAW OR EQUITY WITH RESPECT TO FRAUD OR WILLFUL CONCEALMENT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, NO PARTY MAKES ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW, IN EQUITY, OR OTHERWISE, IN RESPECT OF PARENT, MERGER SUB I, MERGER SUB II, ACUITY, OR FROPTIX, AS APPLICABLE, OR ANY OF THEIR RESPECTIVE ASSETS, LIABILITIES OR OPERATIONS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED REPRESENTATION OR WARRANTY AS TO THE CONDITION, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND EACH SUCH PARTY EXPRESSLY DISCLAIMS ANY SUCH REPRESENTATION OR WARRANTY.

ARTICLE VIII
REGISTRATION RIGHTS

8.1 Piggyback Registration.

(a) Beginning on the first anniversary of the date of this Agreement, Parent will notify all Holders of Registrable Securities in writing at least 10 days prior to the filing of any registration statement under the Securities Act for purposes of a public offering of Parent Common Stock by Parent (including, but not limited to, registration statements relating to secondary offerings of Parent Common Stock, but excluding registration statements relating to employee benefit plans or with respect to corporate reorganizations or other transactions under SEC Rule 145) and will afford each such Holder an opportunity to include in such registration statement up to 50% of such Registrable Securities held by such Holder, subject to Section 8.1(b). Each Holder desiring to include in any such registration statement part of the Registrable Securities held by it will, within 5 days after the above-described notice from Parent (the ***"Holder Notice Period"***), so notify Parent in writing. Such notice will state the intended method of disposition of the Registrable Securities by such Holder as well as the number of Registrable Securities proposed by such Holder to be included in such registration statement.

(b) If the registration statement under which Parent gives notice under this Section 8.1 is for an underwritten offering, Parent will so advise the Holders of Registrable Securities as a part of such notice. In such event, the right of any Holder to be included in a registration pursuant to this Section 8.1 will be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their Registrable Securities through such underwriting will enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by Parent. Notwithstanding any other provision of this Section 8.1, if the underwriter determines that marketing factors require a limitation of the number of shares to be underwritten, the number of shares that may be included in the underwriting will be allocated: first, to Parent and second, to the registration of the Registrable Securities allocated among the Holders of such Registrable Securities on a pro rata basis based on the number of such Registrable Securities held by all such Holders.

(c) Parent will have the right to terminate or withdraw any registration initiated by it under this Section 8.1 prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration.

8.2 Registration Expenses. Parent shall pay all fees and expenses incident to the performance of or compliance with Article VIII, including without limitation (a) all registration and filing fees and expenses, including without limitation those related to filings with the SEC, the Eligible Market and in connection with applicable state securities or Blue Sky Laws, (b) printing expenses (including without limitation expenses of printing certificates for Registrable Securities), (c) messenger, telephone and delivery expenses, (d) fees and disbursements of counsel for Parent, (e) fees and expenses of all other Persons retained by Parent in connection with a registration statement and (f) all listing fees to be paid by Parent to the Eligible Market. Holders shall pay all fees and disbursements of counsel retained for Holders in connection with a registration statement as well as all underwriter discounts associated with any public offering conducted on such Holder's behalf.

8.3 Obligations of Parent. Whenever required to effect the registration of any Registrable Securities, Parent will, as soon as practicable:

(a) Prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its reasonable best efforts to cause such registration statement to become effective and keep such registration statement effective for at least 180 days or, if earlier, until (i) the participating Holder or Holders have completed the distribution related thereto or (ii) the Registrable Securities are no longer required to be registered.

(b) Prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement.

(c) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter or underwriters of such offering. Each Holder participating in such underwriting will also enter into and perform its obligations under such an agreement.

(d) Promptly notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act upon learning of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading and, at the request of the Holders, Parent shall prepare a supplement or amendment to such prospectus so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus shall not contain an untrue statement of a material fact or omit to state any fact necessary to make the statements therein not misleading in the light of the circumstances then existing;

(e) Advise each Holder of Registrable Securities covered by such registration statement and, if requested by any such Holder, confirm such advice in writing:

(i) when such registration statement, and any amendment thereto, has been filed with the SEC and when the registration statement or any post-effective amendment thereto has become effective;

(ii) of any request by the SEC for amendments or supplements to such registration statement or the prospectus included therein or for additional information;

(iii) of the issuance by the SEC of any stop order suspending effectiveness of the registration statement or the initiation of any proceedings for that purpose; and

(iv) of the receipt by Parent of any notification with respect to the suspension of the qualification of the securities included in the registration statement for sale in any jurisdiction or the initiation of any proceeding for such purpose.

8.4 Obligations of the Holders. Each Holder desiring to include in any such registration statement all or any part of the Registrable Securities held by such Holder will reasonably cooperate with Parent in connection with the preparation and filing of any registration statement and each amendment thereof and, upon Parent's reasonable request, will in a timely manner furnish in writing to Parent accurate and complete information regarding the Holder, the distribution of the Registrable Securities and other matters as may be required by applicable Law, rule or regulation for inclusion in the registration statement and each amendment; the provision of such information by such Holders to Parent shall be a condition precedent to Parent's obligations under Section 8.3 hereof.

8.5 Termination of Registration Rights. All registration rights granted under this Article VIII will terminate and be of no further force and effect as to any Holder on the earlier of (a) five years from the date hereof and (b) at such time as all of the Registrable Securities held by such Holder (together with its affiliates, partners and former partners) may be sold under SEC Rule 144 during any 90-day period.

8.6 Dispositions. Each Holder agrees that it will comply with the prospectus delivery requirements of the Securities Act as applicable to it in connection with sales of Registrable Securities pursuant to a registration statement.

8.7 SEC Rule 144 Reporting. With a view to making available to the Holders the benefits of certain rules and regulations of the SEC that may permit the sale of the Registrable Securities to the public without registration, Parent will use its reasonable best efforts to:

(a) Make and keep public information available, as those terms are understood and defined in SEC Rule 144 or any similar or analogous rule promulgated under the Securities Act, at all times after the effective date of the first registration for an offering of its securities to the general public.

(b) File with the SEC, in a timely manner, all reports and other documents required of Parent under the Exchange Act;

(c) As long as a Holder owns any Registrable Securities, furnish to such Holder promptly upon request: a written statement by Parent as to its compliance with the reporting requirements of SEC Rule 144, the Securities Act, and the Exchange Act, a copy of the most recent annual or quarterly report of Parent and such other reports and documents so filed by Parent; and such other reports and documents as a Holder may reasonably request in availing itself of any rule or regulation of the SEC allowing it to sell any such securities without registration.

ARTICLE IX
CONDITIONS PRECEDENT TO THE CLOSING

9.1 Conditions Precedent to Each Party's Obligation to Effect the Mergers. The respective obligations of each party to effect the Mergers shall be subject to the fulfillment or satisfaction, prior to or on the Closing Date, of the following conditions:

(a) Governmental Authorities Approvals. All Governmental Authorities' approvals required for the consummation of the Mergers, if any, shall have been obtained.

(b) No Injunctions or Restraints. No temporary restraining order, preliminary or permanent injunction or other judgment issued by any court of competent jurisdiction or other legal restraint or prohibition that has the effect of preventing the consummation of either the Froptix Merger or the Acuity Merger shall be in effect.

9.2 Conditions Precedent to Obligations of Parent, Merger Sub I and Merger Sub II. Parent's, Merger Sub I's and Merger Sub II's obligation to effect the Mergers and consummate the other transactions contemplated to occur in connection with the Closing is subject to the satisfaction or waiver of each condition precedent listed below.

(a) Representations and Warranties. As of the Closing, each representation and warranty set forth in Article IV and Article V shall be accurate and complete in all material respects, except (i) to the extent that such representations and warranties are qualified by terms such as "material" and "Material Adverse Effect," in which case such representations and warranties shall be true and correct in all respects at and as of the Closing Date, and (ii) to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date.

(b) Fairness Opinion. Parent shall have received an opinion from an independent financial advisor or investment banking firm that the Mergers are fair to the shareholders of Parent from a financial perspective.

(c) Lockup Agreements. Parent shall have received executed copies of the Froptix Lockup Agreements and the Acuity Lockup Agreements.

(d) Receipt of Option Acceleration Waivers. Acuity shall have delivered to Parent duly executed waivers from the Persons set forth on Schedule 7.19 of the Schedule of Exceptions who is a holder of one or more unvested options to purchase Acuity Shares that would become vested, in part or in full, as a result of the Acuity Merger, to waive such acceleration of vesting as contemplated by Section 7.19(a) of this Agreement.

(e) Termination of Investor Rights Agreement. Acuity shall have delivered evidence of the termination of its Investor Rights Agreement, dated September 24, 2004, by and among Acuity and the stockholders of Acuity named therein.

(f) Receipt of Accredited Investor Information.

(i) Acuity shall have delivered evidence to Parent that fewer than 35 Persons who hold Acuity Shares, Acuity Options, Acuity Series B Preferred Warrants and Acuity Common Warrants are not "accredited investors" as such terms is defined in Rule 501(a) of Regulation D as promulgated under the Securities Act.

(ii) Each of the shareholders of Froptix and Acuity set forth on Schedule 9.2(f) of the Schedule of Exceptions shall have delivered a letter to Parent substantially in the form of Exhibit G.

(g) Performance of Obligations of Acuity and Froptix.

(i) Acuity shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date.

(ii) Froptix shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date.

(h) Third-Party Consents. Froptix shall have procured all of the third-party consents set forth in the Schedule of Exceptions delivered by it and Acuity shall have procured all of the third-party consents set forth in the Schedule of Exceptions delivered by it.

(i) Acuity Officer's Certificate. Parent, Merger Sub I and Merger Sub II shall have received a certificate of the president of Acuity certifying as to the matters set forth in Section 9.2(a) with respect to Acuity and (g)(i).

(j) Froptix Officer's Certificate. Parent, Merger Sub I and Merger Sub II shall have received a certificate of the president of Froptix certifying as to the matters set forth in Section 9.2(a) with respect to Froptix and (g)(ii).

(k) Acuity Secretary's Certificate. The duly authorized Secretary of Acuity shall have delivered to Parent certified copies of the Acuity Certificate, the Acuity By-laws and resolutions adopted by its board of directors and shareholders of each class entitled to vote authorizing the Acuity Merger and the transactions contemplated hereby.

(l) Froptix Secretary's Certificate. The duly authorized Secretary of Froptix shall have delivered to Parent certified copies of the Froptix Certificate, the Froptix By-laws and resolutions adopted by its board of directors and shareholders of each class entitled to vote authorizing the Froptix Merger and the transactions contemplated hereby.

(m) Other Documents. Parent shall have received all of the documents, agreements and instruments to be delivered to it in accordance with this Agreement and shall have been provided with such other documents as it shall have reasonably requested from Acuity or Froptix.

9.3 Conditions Precedent to Obligation of Froptix. Froptix's obligations to effect the Froptix Merger and consummate the other transactions contemplated to occur in connection with the Closing is subject to the satisfaction or waiver of each condition precedent listed below.

(a) Representations and Warranties. As of the Closing, each representation and warranty set forth in Article IV and Article VI shall be accurate and complete in all material respects, except (i) to the extent that such representations and warranties are qualified by terms such as "material" and "Material Adverse Effect," in which case such representations and warranties shall be true and correct in all respects at and as of the Closing Date, and (ii) to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date.

(b) Lockup Agreements. Froptix shall have received executed copies of the Acuity Lockup Agreements.

(c) Third-Party Consents. Acuity shall have procured all of the third-party consents set forth in the Schedule of Exceptions delivered by it and Parent shall have procured all of the third-party consents set forth in the Schedule of Exceptions delivered by it, Merger Sub I and Merger Sub II.

(d) Performance of Obligations of Acuity and Parent, Merger Sub I and Merger Sub II.

(i) Acuity shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date.

(ii) Parent shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date.

(iii) Merger Sub I shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date.

(iv) Merger Sub II shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date.

(e) Acuity Officer's Certificate. Froptix shall have received a certificate of the president of Acuity certifying as to the matters set forth in Section 9.3(a) with respect to Acuity and (d)(i).

(f) Parent, Merger Sub I and Merger Sub II Officer's Certificate. Froptix shall have received a certificate of the interim chief executive officer of Parent certifying as to the matters set forth in Section 9.3(a) with respect to Parent, Merger Sub I and Merger Sub II, and (d)(ii), (iii) and (iv).

(g) Acuity Secretary's Certificate. The duly authorized Secretary of Acuity shall have delivered to Froptix certified copies of the Acuity Certificate, the Acuity By-laws and resolutions adopted by its board of directors and shareholders of each class entitled to vote authorizing the Acuity Merger and the transactions contemplated hereby.

(h) Parent Secretary's Certificate. The duly authorized Secretary of Parent shall have delivered to Froptix certified copies of the Parent Certificate, the Parent By-laws, the Merger Sub I Certificate, the Merger Sub I LLC Agreement, the Merger Sub II Certificate and the Merger Sub II LLC Agreement and resolutions adopted by Parent's board of directors on behalf of parent and as the sole member of each of Merger Sub I and Merger Sub II authorizing the Mergers and the transactions contemplated hereby.

(i) Other Documents. Froptix shall have received all of the documents, agreements and instruments to be delivered to it in accordance with this Agreement and shall have been provided with such other documents as it shall have reasonably requested from Acuity or Froptix.

(j) Series C Certificate of Designation. Parent shall have filed with the Secretary of State of the State of Delaware the Series C Certificate of Designation.

(k) Parent Available Cash. Parent shall have at least sixteen million dollars ($16,000,000) in cash and cash equivalents (after deduction of all known liabilities) and no material debt or other material obligations, contingent or otherwise, which would be required to be reflected in the financial statements of Parent in accordance with GAAP.

9.4 Conditions Precedent to Obligation of Acuity. Acuity's obligations to effect the Acuity Merger and consummate the other transactions contemplated to occur in connection with the Closing is subject to the satisfaction or waiver of each condition precedent listed below.

(a) Representations and Warranties. As of the Closing, each representation and warranty set forth in Article V and Article VI shall be accurate and complete in all material respects, except (i) to the extent that such representations and warranties are qualified by terms such as "material" and "Material Adverse Effect," in which case such representations and warranties shall be true and correct in all respects at and as of the Closing Date, and (ii) to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date.

(b) Lockup Agreements. Acuity shall have received executed copies of the Froptix Lockup Agreements.

(c) Third-Party Consents. Froptix shall have procured all of the third-party consents set forth in the Schedule of Exceptions delivered by it and Parent shall have procured all of the third-party consents set forth in the Schedule of Exceptions delivered by it, Merger Sub I and Merger Sub II.

(d) Performance of Obligations of Froptix, Parent, Merger Sub I and Merger Sub II.

(i) Froptix shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date.

(ii) Parent shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date.

(iii) Merger Sub I shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date.

(iv) Merger Sub II shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date.

(e) Froptix Officer's Certificate. Acuity shall have received a certificate of the president of Froptix certifying as to the matters set forth in Section 9.4(a) with respect to Froptix and (d)(i).

(f) Parent, Merger Sub I and Merger Sub II Officer's Certificate. Acuity shall have received a certificate of the interim chief executive officer of Parent certifying as to the matters set forth in Section 9.4(a) with respect to Parent, Merger Sub I and Merger Sub II and (d)(ii), (iii) and (iv).

(g) Froptix Secretary's Certificate. The duly authorized Secretary of Froptix shall have delivered to Acuity's certified copies of the Froptix Certificate, the Froptix By-laws and resolutions adopted by its board of directors and shareholders of each class entitled to vote authorizing the Froptix Merger and the transactions contemplated hereby.

(h) Parent Secretary's Certificate. The duly authorized Secretary of Parent shall have delivered to Acuity certified copies of the Parent Certificate, the Parent By-laws, the Merger Sub I Certificate, the Merger Sub I LLC Agreement, the Merger Sub II Certificate and the Merger Sub II LLC Agreement and resolutions adopted by Parent's board of directors on behalf of parent and as the sole member of each of Merger Sub I and Merger Sub II authorizing the Mergers and the transactions contemplated hereby.

(i) Other Documents. Acuity shall have received all of the documents, agreements and instruments to be delivered to it in accordance with this Agreement and shall have been provided with such other documents as it shall have reasonably requested from Parent or Froptix.

(j) Series C Certificate of Designation. Parent shall have filed with the Secretary of State of the State of Delaware the Series C Certificate of Designation.

(k) Parent Available Cash. Parent shall have at least sixteen million dollars ($16,000,000) in cash and cash equivalents (after deduction of all known liabilities) and no material debt or other material obligations, contingent or otherwise, which would be required to be reflected in the financial statements of Parent in accordance with GAAP.

ARTICLE X
TERMINATION

10.1 Termination. This Agreement may be terminated at any time prior to the Froptix Merger Effective Time, whether before or after the requisite approvals of the shareholders of the Company:

(a) By mutual written consent of Parent, Froptix and Acuity.

(b) By Parent at any time prior to the Froptix Merger Effective Time in the event Froptix or Acuity has breached any material representation, warranty, or covenant made by it in this Agreement in any material respect, Parent has notified such party in writing of the breach, and the breach has continued without cure (i) for a period of 30 days after such notice of breach, or (ii) at the End Date, whichever shall be the earliest.

(c) By Froptix at any time prior to the Froptix Merger Effective Time in the event Parent, Merger Sub I, Merger Sub II or Acuity has breached any material representation, warranty, or covenant made by it in this Agreement in any material respect, Froptix has notified such party in writing of the breach, and the breach has continued without cure (i) for a period of 30 days after such notice of breach, or (ii) at the End Date, whichever shall be the earliest.

(d) By Acuity at any time prior to the Froptix Merger Effective Time in the event Parent, Merger Sub I, Merger Sub II or Froptix has breached any material representation, warranty, or covenant made by it in this Agreement in any material respect, Acuity has notified such party in writing of the breach, and the breach has continued without cure (i) for a period of 30 days after such notice of breach, or (ii) at the End Date, whichever shall be the earliest.

(e) By either Froptix, Acuity or Parent if the Froptix Merger Effective Time and the Acuity Merger Effective Time shall not have occurred on or before the End Date; provided that the party seeking to terminate this Agreement pursuant to this Section 10.1(e) shall not have breached in any material respect its obligations under this Agreement in any manner that shall have proximately caused the failure to consummate the Mergers on or before the End Date.

(f) By either Froptix, Acuity or Parent if any restraining order, injunction, legal restraint, prohibition or other judgment has been issued by any court of competent jurisdiction that has the effect of preventing the consummation of either the Froptix Merger or the Acuity Merger and such restraint, injunction or prohibition has become final and nonappealable; provided that the party seeking to terminate this Agreement pursuant to this Section 10.1(f) shall not have breached in any material respect its obligations under this Agreement in any manner that shall have proximately caused the restraining order, injunction, legal restraint, prohibition or other judgment to have been issued by any court of competent jurisdiction.

10.2 Liability. In the event of termination of this Agreement pursuant to this Article X, this Agreement shall terminate and there shall be no other liability on the part of Froptix, Acuity or Parent to any other party except (a) liability arising out of a any breach of this Agreement, in which case the aggrieved party shall be entitled to all rights and remedies available at Law or in equity, subject to Article XI, and (b) the provisions of the Confidentiality Agreement, Section 7.1, this Section 10.2, and Articles XI and XII, which provisions shall survive such termination.

ARTICLE XI
INDEMNIFICATION

11.1 Survival. The representations and warranties of Parent, Merger Sub I, Merger Sub II, Acuity and Froptix contained in or made pursuant to this Agreement will survive the execution and delivery of this Agreement and the Closing, and for an additional 12 months immediately subsequent to the Closing.

11.2 Indemnification.

(a) Parent hereby agrees to indemnify and hold harmless Acuity and Froptix and, as applicable, their respective officers, directors, stockholders, agents and representatives from and against any and all claims, demands, losses, damages, expenses or liabilities (including reasonable attorneys' fees) due to or arising out of a material breach of any representation, warranty or covenant provided by Parent, Merger Sub I or Merger Sub II hereunder.

(b) Froptix hereby agrees to indemnify and hold harmless Parent and, as applicable, its officers, managers, directors, stockholders, members, agents and representatives from and against any and all claims, demands, losses, damages, expenses or liabilities (including reasonable attorneys' fees) due to or arising out of (i) a material breach of any representation, warranty or covenant provided by Froptix hereunder and (ii) pursuant to Section 7.8 of the Master Agreement; *provided, however*, that no indemnification shall be applicable to any losses with respect to taxes incurred by virtue of the Mergers unless such loss was caused by a breach of Section 7.2.

(c) Acuity hereby agrees to indemnify and hold harmless Parent and, as applicable, its officers, managers, directors, stockholders, members, agents and representatives from and against any and all claims, demands, losses, damages, expenses or liabilities (including reasonable attorneys' fees) due to or arising out of (i) a material breach of any representation, warranty or covenant provided by Acuity hereunder and (ii) pursuant to Section 7.8 of the Master Agreement; *provided, however*, that no indemnification shall be applicable to any losses with respect to taxes incurred by virtue of the Mergers unless such loss was caused by a breach of Section 7.2.

11.3 Holdback. As security for the parties' respective indemnification obligations hereunder, Parent shall hold back eleven and one-half percent (11.5%) of each of the shares of Parent Common Stock, shares of Parent Series C Preferred Stock and Parent Warrants issued in connection with the Acuity Merger (the ***"Acuity Escrowed***

Securities") and in connection with the Froptix Merger (the ***"Froptix Escrowed Securities,"*** and together with the Acuity Escrowed Securities, the ***"Escrowed Securities"***) pursuant to the terms of Article III hereof and this Article XI. The Escrowed Securities shall be released in accordance with the terms thereof on the date that is 364 days after the Closing Date, except with respect to a number of such Acuity Escrowed Securities and/or Froptix Escrowed Securities, as applicable, reasonably determined to be necessary to satisfy any claim made pursuant to this Article XI in writing prior to such release date, which securities shall be held pursuant to the terms hereof until such claim is fully and finally resolved. Parent shall offset losses for which Acuity is obligated to provide indemnification hereunder against the Acuity Escrowed Securities on a pro rata basis based on the number of such securities (calculated on a fully diluted basis) issued to each holder thereof and held in such escrow, and the aggregate number of Acuity Escrowed Securities subject to such offset shall be determined by dividing the amount of such indemnifiable losses, as fully and finally determined to be due, by the average closing price per share of Parent Common Stock on the OTCBB or Eligible Market, as applicable, for the ten-day period ending on the day prior to such offset. Parent shall offset losses for which Froptix is obligated to provide indemnification hereunder against the Froptix Escrowed Securities on a pro rata basis based on the number of such securities (calculated on a fully diluted basis) issued to each Froptix Shareholder and held in such escrow, and the aggregate number of Froptix Escrowed Securities subject to such offset shall be determined by dividing the amount of such indemnifiable losses, as fully and finally determined to be due, by the average closing price per share of Parent Common Stock on the OTCBB or Eligible Market, as applicable, for the ten-day period ending on the day prior to such offset.

11.4 Sole Remedy; Limitation of Damages. The indemnification set forth in this Article XI shall be the sole remedy of the parties with respect to breaches of representations and warranties hereunder. In no event shall any party be entitled to punitive, exemplary, special, incidental or consequential damages or the like for any breach of any term hereunder.

11.5 Right to Indemnification Not Affected by Knowledge or Waiver. The right to indemnification, payment of losses or other remedy based upon breach of representations, warranties, or covenants, or pursuant to Section 7.8 of the Master Agreement, will not be affected by any investigation conducted with respect to, or knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with any such representation, warranty, or covenant.

ARTICLE XII
MISCELLANEOUS

12.1 Successors and Assigns. This Agreement is binding upon and inures to the benefit of the parties and their successors and assigns. None of the parties to this Agreement may assign or otherwise transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other parties.

12.2 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

12.3 Facsimile. A facsimile copy of an original written signature shall be deemed to have the same effect as an original written signature.

12.4 Captions and Headings. The captions and headings used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

12.5 Notices. Unless otherwise provided herein, all notices, requests, waivers and other communications made pursuant to this Agreement will be in writing and will be conclusively deemed to have been duly given (i) when hand delivered to the other party; (ii) upon receipt, when sent by facsimile to the number set forth below or email to the address set forth below; or (iii) the next business day after deposit with a national overnight delivery service, postage prepaid, addressed to the parties as set forth below with next business day delivery guaranteed. Each person making a communication hereunder by facsimile or email will promptly confirm by telephone to the person to whom such communication was addressed each communication made by it by facsimile or email pursuant hereto. A party may change or supplement the addresses given below, or designate additional addresses for purposes of this Section 12.5, by giving the other party written notice of the new address in the manner set forth above.

If to eXegenics:	eXegenics Inc. 1250 Pittsford-Victor Road Building 200, Suite 280 Pittsford, New York 14534 Attention: John Paganelli Phone: 239-561-8966 Facsimile: 239-561-8766
with a copy to:	Harris Beach PLLC 99 Garnsey Road Pittsford, NY 14534 Attention: Thomas E. Willett Phone: 585-419-8646 Facsimile: 585-419-8801
If to Acuity:	Acuity Pharmaceuticals, Inc. Market Street Philadelphia, PA 19104 Attention: Chief Executive Officer Phone: 215-966-6180 Facsimile: 215-966-6001
with a copy to:	Pepper Hamilton LLP Two Logan Square Philadelphia, PA 19103 Attention: Ilan Katz, Esq. Phone: 215-981-4321 Facsimile: 215-981-4750
If to Froptix:	Froptix Corporation Biscayne Blvd., 15th Floor Miami, FL 33137 Attention: Steven D. Rubin, Esq. Phone: 305-575-6015 Facsimile: 305-575-6444
with a copy to:	Akerman Senterfitt One Southeast Third Avenue, 27th Floor Miami, FL 33131 Attention: Teddy D. Klinghoffer, Esq. Phone: 305-374-5600 Facsimile: 305-374-5095

12.6 Amendments and Waivers. Any term of this Agreement may be amended, only with the written consent of Acuity, Parent and Froptix; *provided*, *however*, (i) that if such amendment is effected after this agreement has been approved by the stockholders of Acuity, the affirmative vote of the holders of least a majority of the outstanding Acuity Shares entitled to vote to approve this Agreement and the holders of at least 60% of the

outstanding shares of Acuity Series B Preferred Stock shall be required to amend any term of this Agreement, and (ii) that if such amendment is effected after this agreement has been approved by the stockholders of Froptix, the affirmative vote of the holders of least a majority of the outstanding Froptix Shares entitled to approve this Agreement shall be required to amend any term of this Agreement. The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) at any time by the Party or Parties hereto entitled to the benefit thereof.

12.7 Enforceability; Severability. The parties hereto agree that each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable Law. If one or more provisions of this Agreement are nevertheless held to be prohibited, invalid or unenforceable under applicable Law, such provision will be effective to the fullest extent possible excluding the terms affected by such prohibition, invalidity or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement. If the prohibition, invalidity or unenforceability referred to in the prior sentence requires such provision to be excluded from this Agreement in its entirety, the balance of the Agreement will be interpreted as if such provision were so excluded and will be enforceable in accordance with its terms.

12.8 Governing Law. This Agreement shall be construed in accordance with, and governed in all respects by, the Laws of the State of Florida.

12.9 Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLE WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF. EACH OF THE PARTIES HERETO ALSO WAIVES ANY BOND OR SURETY OR SECURITY UPON SUCH BOND THAT MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF THE OTHER PARTY. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT. EACH OF THE PARTIES HERETO HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT EACH HAS REVIEWED OR HAD THE OPPORTUNITY TO REVIEW THIS WAIVER WITH ITS RESPECTIVE LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH SUCH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

12.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties hereto, their successors, assigns and heirs, and no other Person shall have any right or action under this Agreement.

12.11 Entire Agreement. This Agreement, the Confidentiality Agreement, the Master Agreement (as amended and restated in the Credit Agreement dated as of the date hereof between Parent, Acuity and the Frost Group, LLC), attached hereto as Exhibit H, and all exhibits hereto and thereto constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and no party will be liable or bound to any other party in any manner by any warranties, representations or covenants except as specifically set forth herein or therein.

12.12 Delays or Omissions. No delay or omission to exercise any right power or remedy accruing to any party under this Agreement, or upon any breach or default of any other party under this Agreement, will impair any such right, power or remedy of such non-breaching or non-defaulting party nor will it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor will any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any provisions or conditions of this Agreement, must be in writing and will be effective only to the extent specifically set forth in such writing. Except as otherwise set forth herein, all remedies, either under this Agreement or by Law or otherwise afforded to any party, will be cumulative and not alternative.

12.13 No Strict Construction. The language used in this Agreement is deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

12.14 Expenses. If the Mergers are not consummated, each party shall bear and pay all of the legal, accounting and other costs and expenses incurred by it in connection with the transactions contemplated by this Agreement.

12.15 Exhibits and Schedule of Exceptions. All exhibits, annexes and schedules, including the Schedule of Exceptions, annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. A disclosure in any particular Schedule of the Schedule of Exceptions, or the SEC Reports by Parent, or otherwise in this Agreement will be deemed adequate to disclose another exception to a representation or warranty made herein if the disclosure identifies the exception with reasonable particularity so that any exception to any other Schedule is reasonably apparent.

[Signatures begin on next page.]

IN WITNESS THEREOF, this Agreement has been executed by the undersigned as of the day, month and year first above written.

eXegenics Inc.

By: /s/ John A. Paganelli
Name: John A. Paganelli
Title: Interim Chief Executive Officer

Acuity Pharmaceuticals, Inc.

By: /s/ John A. Paganelli
Name: Dale R. Pfost
Title: President & Chief Executive Officer

Froptix Corporation

By: /s/ Steven D. Rubin
Name: Steven D. Rubin
Title: Vice President

e-Acquisition Company I-A, LLC

By: /s/ Dale R. Pfost
Name: Dale R. Pfost
Title: President

e-Acquisition Company II-B, LLC

By: /s/ Dale R. Pfost
Name: Dale R. Pfost
Title: President

EXHIBIT 4.1

FORM OF COMMON STOCK WARRANT

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY SHARE MAY BE SOLD OR TRANSFERRED ABSENT SUCH REGISTRATION OR AN EXEMPTION THEREFROM.

Effective Date: _____

WARRANT TO PURCHASE COMMON STOCK

EXEGENICS INC.

EXPIRING _____ [TEN YEARS FROM ISSUANCE DATE] (THE "EXPIRATION DATE")

THIS WARRANT CERTIFIES THAT _____ or their permitted assigns ("Holder"), for good and valuable consideration, the receipt of which is hereby acknowledged, has been granted the right to purchase from eXegenics Inc., a Delaware corporation (the "Company"), at any time and from time to time, for a period commencing on the Effective Date (as defined below) and ending on the Expiration Date, _____ (the "Warrant Number") validly issued, fully-paid and non-assessable shares (the "Shares") of the Company's common stock, par value $.01 per share, subject to adjustment as provided herein, at the exercise price of $_____ per share (the "Exercise Price").

1. **Term of Warrant**. Subject to the terms and conditions set forth herein, this Warrant shall be exercisable, in whole or in part, during the term ("Term") commencing at 9:00 a.m., New York, New York time, on the date hereof (the "Effective Date") and ending at 5:00 p.m., New York, New York time on the Expiration Date, and shall be void thereafter.

2. **Exercise of Warrant.**

2.1. Manner of Exercise. The purchase rights represented by this Warrant are exercisable by the Holder in whole or in part, at any time, or from time to time, during the Term, by the surrender of this Warrant and the Notice of Exercise (in the form annexed hereto as Exhibit A), duly completed and executed on behalf of the Holder, at the office of the Company (or such other office or agency of the Company as it may designate by notice in writing to the Holder), upon payment of the purchase price of the Shares to be purchased (i) in cash or wire transfer to an account designated by the Company, (ii) by a Net Issue Election as provided for below or (iii) a combination of the foregoing.

2.2. Time of Exercise. This Warrant shall be deemed to have been exercised immediately prior to the close of business on the date of its surrender for exercise as provided above (the "Exercise Date"), and the Person entitled to receive the Shares issuable upon such exercise shall be treated for all purposes as the holder of record of such Shares as of the close of business on such date. As used in this Warrant, "Person" shall mean an individual, corporation,

limited liability company, partnership, trust, incorporated or unincorporated association, joint venture, joint stock company, government (or any agency or political subdivision thereof) or other entity of any kind.

2.3. Delivery of Certificate and Revised Warrant. As promptly as practicable on or after the Exercise Date and in any event within fifteen (15) days thereafter, the Company at its expense, will issue and deliver to the Person(s) entitled to receive the same a certificate or certificates for the number of Shares issuable upon such exercise or other appropriate written evidence of the issuance of the Shares. In the event that this Warrant is exercised in part, the Company at its expense shall execute and deliver a new Warrant of like tenor exercisable for the number of Shares for which this Warrant may then be exercised at the same time.

2.4. No Fractional Shares. No fractional Shares or scrip representing fractional Shares shall be issued upon the exercise of this Warrant. In lieu of any fractional Share to which the Holder would otherwise be entitled, the Company shall make a cash payment equal to the Exercise Price multiplied by such fraction.

2.5. Net Issue Exercise. Notwithstanding any provisions herein to the contrary, if the fair market value of one Share is greater than the Exercise Price, in lieu of exercising this Warrant for cash, the Holder may elect to receive Shares equal to the value (as determined below) of this Warrant (or the portion thereof being canceled) by surrender of this Warrant at the principal office of the Company together with the properly endorsed Notice of Exercise and notice of such election in which event the Company shall issue to the Holder a number of Shares computed using the following formula:

$$X = \frac{Y\ (A-B)}{A}$$

Where:

X = the number of Shares to be issued to the Holder

Y = the number of Shares purchasable under the Warrant or, if only a portion of the Warrant is being exercised, the portion of the Warrant being canceled (at the date of such calculation)

A = the fair market value of one Share (at the date of such calculation)

B = Exercise Price

For purposes of the above calculation, fair market value of one Share shall be determined in good faith by the Board of Directors of the Company; provided, however, that where there exists a public market for the Shares at the time of such exercise, the fair market value per Share shall be the average of the closing bid and asked prices of the Shares quoted in the Over-the-Counter Market Summary or the last reported sale price of the Common Stock or the closing price quoted on the American Stock Exchange or on any exchange or market on which the Common Stock is listed, whichever is applicable, as published in the Eastern Edition of The Wall Street Journal for the three (3) trading days immediately prior to the date of determination

of fair market value on which at least 10,000 Shares were traded. The Company shall promptly respond in writing to an inquiry by the Holder as to the fair market value of one Share at any particular time.

3. **Adjustments to the Shares**.

3.1. Merger, Sale of Assets, etc. If at any time while this Warrant, or any portion thereof, is outstanding and unexpired there shall be (i) a reorganization (other than a combination, reclassification, exchange or subdivision of securities otherwise provided for herein), (ii) a merger or consolidation of the Company with or into another entity in which the Company is not the surviving entity, or a reverse triangular merger in which the Company is the surviving entity but the Company's shares of capital stock outstanding immediately prior to the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise, or (iii) a sale or transfer of the Company's properties and assets as, or substantially as, an entirety to any other person, this Warrant shall thereafter represent the right to acquire the number of Shares or other securities or property which the Holder of this Warrant would have owned immediately after the consummation of such reorganization, merger, consolidation, sale or transfer, if the Holder of this Warrant had exercised this Warrant immediately before the effective date of the reorganization, merger, consolidation, sale or transfer.

3.2. Reclassification, etc. If the Company, at any time while this Warrant, or any portion hereof, remains outstanding and unexpired by reclassification of securities or otherwise, shall change any of the securities as to which purchase rights under this Warrant exist into the same or a different number of securities of any other class or classes, this Warrant shall thereafter represent the right to acquire such number and kind of securities as would have been issuable as the result of such change with respect to the securities that were subject to the purchase rights under this Warrant immediately prior to such reclassification or other change and the Warrant Number shall be appropriately adjusted, all subject to further adjustment as provided for herein.

3.3. Split, Subdivision or Combination of Shares. If the Company at any time while this Warrant, or any portion hereof, remains outstanding and unexpired shall split, subdivide or combine the securities as to which purchase rights under this Warrant exist, into a different number of securities of the same class, the Warrant Number shall be proportionately increased (and the Exercise Price decreased correspondingly) in the case of a split or subdivision or proportionately decreased (and the Exercise Price increased correspondingly) in the case of a combination.

3.4. Adjustments for Dividends in Shares or Other Securities or Property. If while this Warrant, or any portion hereof, remains outstanding and unexpired, the holders of the securities as to which purchase rights under this Warrant exist at the time shall have received, or, on or after the record date fixed for the determination of eligible shareholders, shall have become entitled to receive, without payment therefor, other or additional securities or property (other than cash) of the Company by way of dividend, then and in each case, this Warrant shall represent the right to acquire, in addition to the number of Shares receivable upon exercise of this Warrant, and without payment of any additional consideration therefor, the amount of such

other or additional securities or property (other than cash) of the Company that such Holder would hold on the date of such exercise had it been the holder of record of the security receivable upon exercise of this Warrant on the date hereof and had thereafter, during the period from the date hereof to and including the date of such exercise, retained such Shares and/or all other additional securities available to it as aforesaid during such period, giving effect to all adjustments called for during such period by the provisions of this Warrant.

4. **Certificate as to Adjustments**. Upon the occurrence of each adjustment or readjustment pursuant to Section 3, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each Holder a certificate setting forth, in reasonable detail, the event requiring the adjustment or readjustment, the amount of such adjustment or readjustment, the method by which such adjustment or readjustment was calculated, the Exercise Price, and the number of Shares and the amount, if any, of other property that at the time would be received upon the exercise of the Warrant. The Company shall upon the written request, at any time, of any such Holder, furnish or cause to be furnished to such Holder a like certificate.

5. **Share Legend.** Each certificate for Shares issued upon exercise of this Warrant may bear the following legend, unless at the time of exercise such Shares are registered under the Securities Act:

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THESE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO DISTRIBUTION OR RESALE, AND MAY NOT BE MORTGAGED, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SECURITIES UNDER THE SECURITIES ACT OF 1933 UNLESS REGISTRATION IS NOT REQUIRED UNDER SUCH ACT.

6. **Shares to be Fully Paid.** The Company will issue Shares pursuant to this Warrant as fully paid, non-assessable and free from all liens and encumbrances.

7. **Company to Reserve Shares.** At all times before the date on which the Warrant expires (the "Expiration Date"), the Company will reserve and keep available, free from preemptive rights, out of its authorized but unissued Shares or Shares held in the treasury of the Company, for the purpose of effecting the exercise of this Warrant, the full number of Shares then deliverable upon the exercise of this Warrant. The issuance of this Warrant shall constitute full authority to those officers of the Company who are charged with the duty of executing stock certificates to execute and issue the necessary certificates for Shares upon exercise of this Warrant.

8. **Exchange of Warrant.** The Holder may exchange this Warrant, at the Company's expense, at any time prior to the Expiration Date, by surrendering this Warrant to the Company, for other warrant certificates, upon the same terms and conditions of this Warrant, which in the aggregate entitle the Holders to purchase the balance of Shares then covered by this Warrant. In addition, on receipt of evidence reasonably satisfactory to the Company of the loss,

theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory to the Company (but without the requirement for posting an indemnity bond) or, in the case of mutilation, on surrender and cancellation of this Warrant, the Company at its expense shall execute and deliver, in lieu of this Warrant, a new Warrant of like tenor.

9. **No Rights as Stockholder.** Except as otherwise provided herein, this Warrant will not entitle the Holder to any of the rights of a stockholder of the Company, including, without limitation, the right to vote or to receive distributions.

10. **Amendment.** This Warrant may not be amended except with the prior written consent of the Holder and the Company. Any instrument given by or on behalf of the Holder in connection with any consent to any modification or amendment will be conclusive and binding on all subsequent holders of this Warrant.

11. **Loss, Theft, Destruction or Mutilation of Warrant**. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company issue or cause to be issued a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

12. **Transfer.** The securities evidenced hereby have not been registered under the Securities Act of 1933 or any state securities laws; such securities may not be transferred, sold, pledged, or otherwise disposed of unless such securities are registered under the Securities Act of 1933 and such state laws or such transactions are exempt from the registration requirements thereof. Upon surrender of this Warrant as a result of a transfer hereof, the Company, at the expense of the transferee or transferor hereof, as the transferee and transferor may decide between themselves, will issue and deliver to, or to the order of, the transferee a new Warrant in the name of such transferee, or as such transferee (on payment by such transferee of any applicable transfer taxes) may direct, calling in the aggregate on the face thereof for the number of Shares called for on the face of this Warrant. As a condition to effecting any transfer, the Holder shall notify the Company of the proposed transfer by delivering a Notice of and Form of Assignment (in the form annexed hereto as Exhibit B), duly completed and executed on behalf of the Holder at the office of the Company (or such other office or agency of the Company as it may designate by notice in writing to the Holder).

13. **Successors and Assigns.** This Warrant shall not be assignable by the Company without the prior written consent of the Holder and any such assignment in violation hereof shall be null and void. Subject to the foregoing, this Warrant shall bind and inure to the benefit of the Company and its permitted successors and assigns, the Holder and its successors and assigns.

14. **Applicable Law.** This Warrant shall be construed in accordance with, and governed by, the laws of the State of Delaware without giving effect to the conflict of laws provisions thereof.

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed as of the Effective Date set forth above.

EXEGENICS INC.

By: _____
Name:
Title:

EXHIBIT A

NOTICE OF EXERCISE

Dated: _____

1. The undersigned hereby elects to purchase _____ shares of the common stock of eXegenics Inc. pursuant to the terms of the attached Warrant, and tenders herewith payment of the purchase price of such securities in full. Such purchase price is being paid [insert whether by cash and/or cancellation of indebtedness].

1. The undersigned hereby elects to convert the attached Warrant into shares of the common stock of _____ in the manner specified in Section 2.5 of the Warrant. This conversion is exercised with respect to _____ of the securities covered by the Warrant.

[Strike paragraph that does not apply.]

2. Please issue certificate(s) representing said shares in the name of the undersigned or in such other name(s) as is specified below and deliver such certificates to the address(es) specified below:

[insert name(s) and address(es)]

3. Please issue a new Warrant for the unexercised portion of the attached Warrant in the name of the undersigned or in such other name as is specified below:

[strike if not applicable]

[Insert name of Holder]

By: _____
Name:
Title:

EXHIBIT B

NOTICE OF AND
FORM OF ASSIGNMENT
(TO BE SIGNED ONLY ON TRANSFER OF WARRANT)

For value received, the undersigned hereby sells, assigns, and transfer unto _____, federal taxpayer identification number _____, whose address is _____, the right represented by the within Warrant to purchase _____ shares of Common Stock of _____ to which the within Warrant relates, and appoints the Secretary of _____ Attorney to transfer such right on the books of _____ with full power of substitution in the premises.

Dated:

_____
(Signature must conform to name of holder as specified on the face of the Warrant)

Signed in the presence of:

_____
Address

_____

EXHIBIT 4.2

FORM OF SERIES C PREFERRED STOCK WARRANT

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY SHARE MAY BE SOLD OR TRANSFERRED ABSENT SUCH REGISTRATION OR AN EXEMPTION THEREFROM.

Effective Date: _____

WARRANT TO PURCHASE SERIES C PREFERRED STOCK

EXEGENICS INC.

EXPIRING _____ [TEN YEARS FROM ISSUANCE DATE] (THE "EXPIRATION DATE")

THIS WARRANT CERTIFIES THAT _____ or their permitted assigns ("Holder"), for good and valuable consideration, the receipt of which is hereby acknowledged, has been granted the right to purchase from eXegenics Inc., a Delaware corporation (the "Company"), at any time and from time to time, for a period commencing on the Effective Date (as defined below) and ending on the Expiration Date, _____ (the "Warrant Number") validly issued, fully-paid and non-assessable shares (the "Shares") of the Company's Series C preferred stock, par value $.01 per share, subject to adjustment as provided herein, at the exercise price of $_____ per share (the "Exercise Price").

1. **Term of Warrant**. Subject to the terms and conditions set forth herein, this Warrant shall be exercisable, in whole or in part, during the term ("Term") commencing at 9:00 a.m., New York, New York time, on the date hereof (the "Effective Date") and ending at 5:00 p.m., New York, New York time on the Expiration Date, and shall be void thereafter.

2. **Exercise of Warrant.**

2.1. Manner of Exercise. The purchase rights represented by this Warrant are exercisable by the Holder in whole or in part, at any time, or from time to time, during the Term, by the surrender of this Warrant and the Notice of Exercise (in the form annexed hereto as Exhibit A), duly completed and executed on behalf of the Holder, at the office of the Company (or such other office or agency of the Company as it may designate by notice in writing to the Holder), upon payment of the purchase price of the Shares to be purchased (i) in cash or wire transfer to an account designated by the Company, (ii) by a Net Issue Election as provided for below or (iii) a combination of the foregoing.

2.2. Time of Exercise. This Warrant shall be deemed to have been exercised immediately prior to the close of business on the date of its surrender for exercise as provided above (the "Exercise Date"), and the Person entitled to receive the Shares issuable upon such exercise shall be treated for all purposes as the holder of record of such Shares as of the close of business on such date. As used in this Warrant, "Person" shall mean an individual, corporation,

limited liability company, partnership, trust, incorporated or unincorporated association, joint venture, joint stock company, government (or any agency or political subdivision thereof) or other entity of any kind.

2.3. Delivery of Certificate and Revised Warrant. As promptly as practicable on or after the Exercise Date and in any event within fifteen (15) days thereafter, the Company at its expense, will issue and deliver to the Person(s) entitled to receive the same a certificate or certificates for the number of Shares issuable upon such exercise or other appropriate written evidence of the issuance of the Shares. In the event that this Warrant is exercised in part, the Company at its expense shall execute and deliver a new Warrant of like tenor exercisable for the number of Shares for which this Warrant may then be exercised at the same time.

2.4. No Fractional Shares. No fractional Shares or scrip representing fractional Shares shall be issued upon the exercise of this Warrant. In lieu of any fractional Share to which the Holder would otherwise be entitled, the Company shall make a cash payment equal to the Exercise Price multiplied by such fraction.

2.5. Net Issue Exercise. Notwithstanding any provisions herein to the contrary, if the fair market value of one Share is greater than the Exercise Price, in lieu of exercising this Warrant for cash, the Holder may elect to receive Shares equal to the value (as determined below) of this Warrant (or the portion thereof being canceled) by surrender of this Warrant at the principal office of the Company together with the properly endorsed Notice of Exercise and notice of such election in which event the Company shall issue to the Holder a number of Shares computed using the following formula:

$$X = \frac{Y\ (A-B)}{A}$$

Where:

X = the number of Shares to be issued to the Holder

Y = the number of Shares purchasable under the Warrant or, if only a portion of the Warrant is being exercised, the portion of the Warrant being canceled (at the date of such calculation)

A = the fair market value of one Share on an as converted basis on the Company's common stock (at the date of such calculation)

B = Exercise Price

For purposes of the above calculation, fair market value of one Share shall be determined in good faith by the Board of Directors of the Company; provided, however, that where there exists a public market for the Shares at the time of such exercise, the fair market value per Share shall be the average of the closing bid and asked prices of the Shares quoted in the Over-the-Counter Market Summary or the last reported sale price of the Common Stock or the closing price quoted on the American Stock Exchange or on any exchange or market on which the Common Stock is listed, whichever is applicable, as published in the Eastern Edition of The

Wall Street Journal for the three (3) trading days immediately prior to the date of determination of fair market value on which at least 10,000 Shares were traded. The Company shall promptly respond in writing to an inquiry by the Holder as to the fair market value of one Share at any particular time.

3. **Adjustments to the Shares**.

3.1. Merger, Sale of Assets, etc. If at any time while this Warrant, or any portion thereof, is outstanding and unexpired there shall be (i) a reorganization (other than a combination, reclassification, exchange or subdivision of securities otherwise provided for herein), (ii) a merger or consolidation of the Company with or into another entity in which the Company is not the surviving entity, or a reverse triangular merger in which the Company is the surviving entity but the Company's shares of capital stock outstanding immediately prior to the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise, or (iii) a sale or transfer of the Company's properties and assets as, or substantially as, an entirety to any other person, this Warrant shall thereafter represent the right to acquire the number of Shares or other securities or property which the Holder of this Warrant would have owned immediately after the consummation of such reorganization, merger, consolidation, sale or transfer, if the Holder of this Warrant had exercised this Warrant immediately before the effective date of the reorganization, merger, consolidation, sale or transfer.

3.2. Reclassification, etc. If the Company, at any time while this Warrant, or any portion hereof, remains outstanding and unexpired by reclassification of securities or otherwise, shall change any of the securities as to which purchase rights under this Warrant exist into the same or a different number of securities of any other class or classes, this Warrant shall thereafter represent the right to acquire such number and kind of securities as would have been issuable as the result of such change with respect to the securities that were subject to the purchase rights under this Warrant immediately prior to such reclassification or other change and the Warrant Number shall be appropriately adjusted, all subject to further adjustment as provided for herein.

3.3. Split, Subdivision or Combination of Shares. If the Company at any time while this Warrant, or any portion hereof, remains outstanding and unexpired shall split, subdivide or combine the securities as to which purchase rights under this Warrant exist, into a different number of securities of the same class, the Warrant Number shall be proportionately increased (and the Exercise Price decreased correspondingly) in the case of a split or subdivision or proportionately decreased (and the Exercise Price increased correspondingly) in the case of a combination.

3.4. Adjustments for Dividends in Shares or Other Securities or Property. If while this Warrant, or any portion hereof, remains outstanding and unexpired, the holders of the securities as to which purchase rights under this Warrant exist at the time shall have received, or, on or after the record date fixed for the determination of eligible shareholders, shall have become entitled to receive, without payment therefor, other or additional securities or property (other than cash) of the Company by way of dividend, then and in each case, this Warrant shall represent the right to acquire, in addition to the number of Shares receivable upon exercise of

this Warrant, and without payment of any additional consideration therefor, the amount of such other or additional securities or property (other than cash) of the Company that such Holder would hold on the date of such exercise had it been the holder of record of the security receivable upon exercise of this Warrant on the date hereof and had thereafter, during the period from the date hereof to and including the date of such exercise, retained such Shares and/or all other additional securities available to it as aforesaid during such period, giving effect to all adjustments called for during such period by the provisions of this Warrant.

4. **Certificate as to Adjustments**. Upon the occurrence of each adjustment or readjustment pursuant to Section 3, the Company at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each Holder a certificate setting forth, in reasonable detail, the event requiring the adjustment or readjustment, the amount of such adjustment or readjustment, the method by which such adjustment or readjustment was calculated, the Exercise Price, and the number of Shares and the amount, if any, of other property that at the time would be received upon the exercise of the Warrant. The Company shall upon the written request, at any time, of any such Holder, furnish or cause to be furnished to such Holder a like certificate.

5. **Share Legend.** Each certificate for Shares issued upon exercise of this Warrant may bear the following legend, unless at the time of exercise such Shares are registered under the Securities Act:

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THESE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO DISTRIBUTION OR RESALE, AND MAY NOT BE MORTGAGED, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SECURITIES UNDER THE SECURITIES ACT OF 1933 UNLESS REGISTRATION IS NOT REQUIRED UNDER SUCH ACT.

6. **Shares to be Fully Paid.** The Company will issue Shares pursuant to this Warrant as fully paid, non-assessable and free from all liens and encumbrances.

7. **Company to Reserve Shares.** At all times before the date on which the Warrant expires (the "Expiration Date"), the Company will reserve and keep available, free from preemptive rights, out of its authorized but unissued Shares or Shares held in the treasury of the Company, for the purpose of effecting the exercise of this Warrant, the full number of Shares then deliverable upon the exercise of this Warrant. The issuance of this Warrant shall constitute full authority to those officers of the Company who are charged with the duty of executing stock certificates to execute and issue the necessary certificates for Shares upon exercise of this Warrant.

8. **Exchange of Warrant.** The Holder may exchange this Warrant, at the Company's expense, at any time prior to the Expiration Date, by surrendering this Warrant to the Company, for other warrant certificates, upon the same terms and conditions of this Warrant, which in the aggregate entitle the Holders to purchase the balance of Shares then covered by this

Warrant. In addition, on receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory to the Company (but without the requirement for posting an indemnity bond) or, in the case of mutilation, on surrender and cancellation of this Warrant, the Company at its expense shall execute and deliver, in lieu of this Warrant, a new Warrant of like tenor.

9. **No Rights as Stockholder.** Except as otherwise provided herein, this Warrant will not entitle the Holder to any of the rights of a stockholder of the Company, including, without limitation, the right to vote or to receive distributions.

10. **Amendment.** This Warrant may not be amended except with the prior written consent of the Holder and the Company. Any instrument given by or on behalf of the Holder in connection with any consent to any modification or amendment will be conclusive and binding on all subsequent holders of this Warrant.

11. **Loss, Theft, Destruction or Mutilation of Warrant**. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company issue or cause to be issued a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

12. **Transfer.** The securities evidenced hereby have not been registered under the Securities Act of 1933 or any state securities laws; such securities may not be transferred, sold, pledged, or otherwise disposed of unless such securities are registered under the Securities Act of 1933 and such state laws or such transactions are exempt from the registration requirements thereof. Upon surrender of this Warrant as a result of a transfer hereof, the Company, at the expense of the transferee or transferor hereof, as the transferee and transferor may decide between themselves, will issue and deliver to, or to the order of, the transferee a new Warrant in the name of such transferee, or as such transferee (on payment by such transferee of any applicable transfer taxes) may direct, calling in the aggregate on the face thereof for the number of Shares called for on the face of this Warrant. As a condition to effecting any transfer, the Holder shall notify the Company of the proposed transfer by delivering a Notice of and Form of Assignment (in the form annexed hereto as Exhibit B), duly completed and executed on behalf of the Holder at the office of the Company (or such other office or agency of the Company as it may designate by notice in writing to the Holder).

13. **Successors and Assigns.** This Warrant shall not be assignable by the Company without the prior written consent of the Holder and any such assignment in violation hereof shall be null and void. Subject to the foregoing, this Warrant shall bind and inure to the benefit of the Company and its permitted successors and assigns, the Holder and its successors and assigns.

14. **Applicable Law.** This Warrant shall be construed in accordance with, and governed by, the laws of the State of Delaware without giving effect to the conflict of laws provisions thereof.

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed as of the Effective Date set forth above.

EXEGENICS INC.

By: _____
Name:
Title:

EXHIBIT A

NOTICE OF EXERCISE

Dated: _____

1. The undersigned hereby elects to purchase _____ shares of Series C preferred stock of eXegenics Inc. pursuant to the terms of the attached Warrant, and tenders herewith payment of the purchase price of such securities in full. Such purchase price is being paid [insert whether by cash and/or cancellation of indebtedness].

1. The undersigned hereby elects to convert the attached Warrant into shares of the Series C preferred stock of eXegenics Inc. in the manner specified in Section 2.5 of the Warrant. This conversion is exercised with respect to _____ of the securities covered by the Warrant.

[Strike paragraph that does not apply.]

2. Please issue certificate(s) representing said shares in the name of the undersigned or in such other name(s) as is specified below and deliver such certificates to the address(es) specified below:

[insert name(s) and address(es)]

3. Please issue a new Warrant for the unexercised portion of the attached Warrant in the name of the undersigned or in such other name as is specified below:

[strike if not applicable]

[Insert name of Holder]

By: _____
Name:
Title:

EXHIBIT B

NOTICE OF AND
FORM OF ASSIGNMENT
(TO BE SIGNED ONLY ON TRANSFER OF WARRANT)

For value received, the undersigned hereby sells, assigns, and transfer unto _____, federal taxpayer identification number _____, whose address is _____, the right represented by the within Warrant to purchase ___ shares of Series C preferred stock of eXegenics Inc to which the within Warrant relates, and appoints the Secretary of eXegenics Inc Attorney to transfer such right on the books of eXegenics Inc with full power of substitution in the premises.

Dated:

_____
(Signature must conform to name of holder as specified on the face of the Warrant)

_____
Address

Signed in the presence of:

_____

EXHIBIT 10.1

FORM OF LOCKUP AGREEMENT

eXegenics, Inc.
1250 Pittsford-Victor Road
Building 200, Suite 280
Pittsford, New York 14534
Ladies and Gentlemen:

The undersigned, a holder of shares of _____ ("Company"), desires that the Company merge with and into a wholly-owned subsidiary of eXegenics, Inc. ("Parent") (the "Merger"). For good and valuable consideration, the undersigned is entering into this agreement (this "Lock-Up Letter Agreement") and hereby irrevocably agrees that following the closing of the Merger, and until the second anniversary of closing of the Merger (the "Lock-Up Period End Date"), the undersigned will not, directly or indirectly:

(1) offer for sale, sell, pledge or otherwise dispose of (or enter into any transaction or device that is designed to, or could be expected to, result in the disposition by any person at any time in the future of) any shares of Parent Common Stock or any other securities of Parent convertible into or exercisable for Parent Common Stock which are owned as of the date of this Lock-Up Letter Agreement (collectively, the "Shares"), including, without limitation, Shares that may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the Securities and Exchange Commission and Shares that may be issued upon exercise of any options or warrants, or securities convertible into or exercisable or exchangeable for Shares,

(2) enter into any swap or other derivatives transaction that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of Shares, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Shares or other securities, in cash or otherwise;

(3) make any demand for or exercise any right or cause to be filed a registration statement, including any amendments thereto, with respect to the registration of any Shares or securities convertible into or exercisable or exchangeable for Shares or any other securities of Parent; or

(4) publicly disclose the intention to do any of the foregoing, for a period commencing on the date of the closing of the Merger and ending on the second anniversary of the closing of the Merger.

Notwithstanding sections (1) through (4) above, (i) up to one-third of the Shares shall be exempt from and shall not be subject to this Lock-Up Letter Agreement

and the undertakings set forth herein beginning upon the twelve month anniversary of the closing of the Merger, (ii) one third of the Shares shall be exempt from and shall not be subject to this Lock-Up Letter Agreement and the undertakings set forth herein beginning upon the eighteen month anniversary of the closing of the Merger; and (iii) one-third of the Shares shall be exempt from and shall not be subject to this Lock-Up Letter Agreement and the undertakings set forth herein beginning upon the twenty four month anniversary of the closing of the Merger

In furtherance of the foregoing, Parent and its transfer agent on its behalf are hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this Lock-Up Letter Agreement.

It is understood that if the Merger Agreement entered into in connection with the Merger has been terminated without the consummation of the Merger, this Lock-Up Letter Agreement shall be cancelled and of no further force and effect.

The undersigned understands that the Company will proceed with the Merger in reliance on this Lock-Up Letter Agreement.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Lock-Up Letter Agreement and that, upon request, the undersigned will execute any additional documents necessary in connection with the enforcement hereof. Any obligations of the undersigned shall be binding upon the heirs, personal representatives, successors and assigns of the undersigned.

Nothing herein shall be understood to prevent the undersigned from exercising any warrants to purchase Shares; provided that the Shares issued to the undersigned upon such exercise shall be subject to the terms and conditions of this Lock-Up Letter Agreement until the Lock-Up Period End Date.

For the avoidance of doubt, nothing herein shall be understood to prevent the undersigned from taking any of the actions described in sections (1) through (4) above with respect to any Shares acquired by the undersigned through open market purchases consummated after the date of this Lock-Up Letter Agreement.

The undersigned may transfer Shares to any to any entity directly or indirectly controlled by or under common control with the undersigned; provided, however, that it shall be a condition to such transfer that the transferee executes and delivers to Parent, prior to such transfer, an agreement stating that such transferee is receiving and holding the Shares subject to the provisions of this Lock-Up Letter Agreement.

If the Parent agrees to enter into any agreement with any other holder (or effects a waiver with the same effect) of Shares who agreed to enter into a lock-up letter agreement which is substantially the same as this Lock-Up Letter Agreement to permit such holder to sell Shares prior to the Lock-Up Period End Date which sale would otherwise be restricted by the lock-up letter agreement, the Parent shall enter into a

similar agreement with (or provide a similar waiver to) the undersigned to provide for the release of a proportionate number of Shares.

This Lock-Up Letter Agreement shall terminate upon the Lock-Up Period End Date.

Very truly yours,

By: _____
Name:
Title:

Dated: March ___, 2007

EXHIBIT 10.2

CREDIT AGREEMENT

THIS CREDIT AGREEMENT (this "***Agreement***"), dated as of March 27, 2007 (the "***Initial Closing Date***"), is entered into by and among eXegenics Inc., a Delaware corporation ("***Borrower***"), The Frost Group, LLC, a Florida limited liability company (the "***Frost Group***") and Acuity Pharmaceuticals, LLC, a Delaware limited liability company formerly known as Acuity Pharmaceuticals, Inc. (***"Acuity"***).

RECITALS

WHEREAS, on January 11, 2007, the Frost Group entered into that certain Master Agreement (the ***"Master Agreement"***) with Acuity and Froptix Corporation, a Florida corporation (***"Froptix"***), whereby the Frost Group, among other things, agreed to extend up to a $7,000,000 line of credit to Acuity.

WHEREAS, on March 27, 2007, Acuity and Froptix entered into a Merger Agreement and Plan of Reorganization (the ***"Merger Agreement"***) with Borrower and certain of its subsidiaries, pursuant to which Borrower agreed (i) to assume the obligations of Acuity under the Master Agreement and the Subordinated Note and Security Agreement executed and delivered by Acuity in connection therewith (the ***"Original Note"***) and (ii) to enter into a credit agreement on substantially the terms set forth in the Master Agreement (capitalized terms used but not defined herein shall have the meanings ascribed to them in the Merger Agreement).

WHEREAS, the Merger Agreement further provides that Borrower and the Frost Group increase the amount of available borrowings under the Master Agreement and Original Note to provide Borrower with a subordinated secured line of credit (the "***Line of Credit***") in the amount of $12,000,000 (the ***"Available Amount"***) on the terms set forth herein.

NOW, **THEREFORE**, in consideration of the covenants, promises and representations set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly and mutually acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I
LINE OF CREDIT

Section 1.1. Assumption. Acuity hereby assigns, and Borrower hereby assumes from Acuity, all rights and liabilities outstanding under the Master Agreement and Original Note, whether for principal, accrued interest, expenses and otherwise, and Borrower agrees to discharge all such liabilities in full; *provided* that Borrower does not assume any liabilities of Acuity or Froptix pursuant to Section 7.8 of the Master Agreement, and this Agreement shall in no way affect or diminish such obligations or the rights of Borrower with respect to such obligations. By executing a counterpart signature page to this Agreement, Acuity agrees to this assignment and assumption, and represents and warrants to Borrower and the Frost Group that

there is no default under the Master Agreement or Event of Default (as defined in the Original Note) under the Original Note as of the date hereof.

Section 1.2. The Line of Credit. From time to time prior to the Maturity Date (as defined in the Note (as hereafter defined)), subject to the provisions below, the Frost Group shall make Advances (as hereafter defined) to Borrower, which Borrower shall pay and may reborrow, so long as the aggregate amount of Advances outstanding at any one time shall not exceed the Available Amount.

Section 1.3. Warrants. In consideration of the extension of credit hereunder, Borrower will grant to the Frost Group one or more Warrants (the ***"Warrants"***), which warrants will be issued substantially in the form attached hereto as Exhibit A, with an exercise price equal to the Parent Per Share Stock Valuation (as defined in the Merger Agreement) and will provide such parties the right to buy 333,400 shares of the Borrower's common stock for each million dollars committed by such party (including amounts loaned to Acuity prior to the consummation of the transactions contemplated by the Merger Agreement and assumed hereunder).

Section 1.4. Note. The indebtedness of Borrower to the Frost Group will be evidenced by an amended and restated subordinated note and security agreement in substantially the form of Exhibit B (the ***"Note"***). The original principal amount of the Note will be $12,000,000; *provided*, *however*, that notwithstanding the face amount of the Note, Borrower's liability under the Note shall be limited at all times to its actual indebtedness, principal, interest, fees, charges, expenses and reasonable attorneys' fees and costs and other amounts, obligations, covenants and duties owing by Borrower to the Frost Group (or any permitted assignee) of any kind and description (whether pursuant to or evidenced by the Note or this Agreement), whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including Lender's Expenses (collectively, the ***"Obligations"***), in each case as then outstanding hereunder and under the Note. As used herein, ***"Lender's Expenses"*** means all reasonable attorneys' fees, costs and expenses incurred in amending, enforcing or defending the Note (including fees and expenses of appeal or review), including the exercise of any rights or remedies afforded under the Note or under applicable law, whether or not suit is brought, whether before or after bankruptcy or insolvency, including without limitation all fees and costs incurred by the Frost Group in connection with the Frost Group's enforcement of its rights in a bankruptcy or insolvency proceeding filed by or against Borrower or its property.

Section 1.5. Use of Proceeds. Funds advanced under the Line of Credit shall be used for working capital or general corporate purposes of Borrower.

Section 1.6. Payment of Outstanding Amount. The aggregate Obligations outstanding on the Maturity Date (as defined in the Note) shall be due and payable on the Maturity Date in accordance with the terms of the Note.

Section 1.7. Interest. Interest on the outstanding principal amount of the Line of Credit shall accrue at a rate equal to ten percent (10%) per annum, compounded quarterly (the "***Interest Rate***"), and shall be payable on the last day of each calendar month until the repayment in full of all Obligations, the termination of this Agreement and cancellation of the Note.

Section 1.8. Default Rate. Upon the Maturity Date, whether by acceleration, demand or otherwise, and at the Frost Group's option upon the occurrence of any Event of Default (as defined in the Note) and during the continuance thereof, the Note shall bear interest at a rate that shall be five percent (5.0%) in excess of the Interest Rate but not more than the maximum rate allowed by law (the **"*Default Rate*"**). The Default Rate shall continue to apply whether or not judgment shall be entered on the Note. The Default Rate is imposed as liquidated damages for the purpose of defraying the Frost Group's expenses incident to the handling of delinquent payments, but are in addition to, and not in lieu of, the Frost Group's exercise of any rights and remedies hereunder or under applicable law, and any fees and expenses of any agents or attorneys which the Frost Group may employ. In addition, the Default Rate reflects the increased credit risk to the Frost Group of carrying a loan that is in default. Borrower agrees that the Default Rate is a reasonable forecast of just compensation for anticipated and actual harm incurred by the Frost Group, and that the actual harm incurred by the Frost Group cannot be estimated with certainty and without difficulty.

Section 1.9. Subordination Agreement. On the date of this Agreement, Borrower, the Frost Group and Horizon Technology Funding Company LLC, have entered into a Amended and Restated Subordination Agreement, attached here to as Exhibit C.

Section 1.10. Advances. Borrower shall give the Frost Group prior written notice not later than 3:00 p.m., Eastern time, on the third business day prior to the date of any advance of credit pursuant to the Line of Credit hereunder (an ***"Advance"***). Any such notice shall be in the form of the Borrowing Notice set forth as Exhibit D (the "***Borrowing Notice***"), shall be certified by the president of Borrower, and shall set forth the aggregate amount of the requested Advance. Upon receiving a request for an Advance to which Borrower is entitled hereunder and under the Note, and provided there is no Event of Default (as defined in the Note), the Frost Group shall make available to Borrower the amount of the requested Advance by wire transfer of immediately available funds to a bank account designated by Borrower on the third business day after receipt of such Borrowing Notice.

Section 1.11. Prepayment. Borrower may prepay the outstanding Obligations under the Line of Credit at any time without premium or penalty. Prepayments of all or any portion of the Obligations shall not reduce the Available Amount, and funds may be reborrowed hereunder up to the Available Amount, subject to the provision hereof and the Note.

Section 1.12. Payment Application. Any and all payments on account of the Obligations will be applied first to accrued and unpaid interest and second to outstanding principal and other sums due hereunder. If Borrower makes a payment or payments and such payment or payments, or any part thereof, are subsequently invalidated, declared to be fraudulent or preferential, set aside or are required to be repaid to a trustee, receiver, or any other person under any bankruptcy act, state, provincial or federal law, common law or equitable cause, then to the extent of such payment or payments, the Obligations or part thereof hereunder intended to be satisfied shall be revived and continued in full force and effect as if said payment or payments had not been made.

Section 1.13. Conditions to First Advance. The obligation of the Frost Group to make the first Advance (which shall consist of the Borrower's assumption of obligations

outstanding under the Master Agreement and Original Note assumed from Acuity hereunder) shall be subject to the Frost Group's receipt of the following documents, each in form and substance satisfactory to the Frost Group:

(a) This Agreement. This Agreement duly executed by Borrower and the Frost Group.

(b) Secured Subordinated Promissory Note. The Note duly executed by Borrower.

(c) Borrowing Notice. A completed Borrowing Notice required under Section 1.10 hereof.

(d) The Warrants. The Warrants duly executed by Borrower.

(e) Borrower Secretary's Certificate. The duly authorized Secretary of Borrower shall have delivered a certified copy of Borrower's Certificate of Incorporation, and a certificate as to its Bylaws and resolutions adopted by its board of directors authorizing this Agreement and the transactions contemplated hereby.

(f) Third-Party Consents. Borrower shall have procured all of the third-party consents specified in the Schedule of Exceptions which are required to be procured by Borrower before it can incur the indebtedness evidenced by the Note, issue the Warrants, and otherwise commit itself to its obligations hereunder.

(g) Other Documents. Such additional documents as the Frost Group reasonably may request.

Section 1.14. Subsequent Advances. The obligation of the Frost Group to make additional Advances shall be subject to the Frost Group's receipt of a completed Borrowing Notice and such additional documents as the Frost Group reasonably may request and the absence of any Event of Default.

ARTICLE II
CLOSINGS

Section 2.1. Initial Closing. The closing of this Agreement (the "***Initial Closing***") shall take place at the offices of Akerman Senterfitt, in Miami, Florida, or at such other location(s) as the parties may agree commencing at 9:00 a.m. local time on the Closing Date of the Merger Agreement (as defined therein). At the Initial Closing:

(a) Borrower shall deliver to the Frost Group a fully executed copy of this Agreement, the Note, the Warrants and the other documents described in Section 1.13.

(b) The Frost Group shall deliver to Borrower a fully executed copy of this Agreement.

Section 2.2. Subsequent Closings. The closing of any subsequent advance under this Agreement shall take place at the offices of Akerman Senterfitt, in Miami, Florida, or at such other location(s) as the parties may agree commencing at 9:00 a.m. local time on the date set forth in the Borrowing Notice (provided timely delivery of such Borrowing Notice to the Frost Group has been made). At each such subsequent closing, the Frost Group shall have timely received a completed Borrowing Notice and such additional documents as the Frost Group reasonably may request.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF BORROWER

Except as set forth on the Schedule of Exceptions delivered to the Frost Group in connection with this Agreement (together with the Schedule of Exceptions delivered to the Borrower in connection with this Agreement by the Frost Group, the ***"Schedule of Exceptions"***), Borrower represents and warrants to each of the Frost Group as of the date of this Agreement as follows:

Section 3.1. Organization and Standing. Borrower is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Borrower has the requisite corporate power and authority to own and operate its properties and assets, and to carry on its business as currently conducted. Borrower is presently qualified to do business as a foreign corporation in each jurisdiction in which the failure to be so qualified would have a Material Adverse Effect with respect to Borrower. True and accurate copies of Borrower's Certificate of Incorporation (the "***Borrower Certificate"***), Borrower's By-laws (the "***Borrower By-laws"***), each as in effect as of the date hereof have been delivered to the Frost Group and Acuity.

Section 3.2. Corporate Power. Borrower has all requisite legal and corporate and other power and authority to execute and deliver this Agreement and to carry out and perform its other obligations hereunder.

Section 3.3. Authorization. All corporate and other action on the part of Borrower, and its officers and directors necessary for the (i) due authorization, execution and delivery of this Agreement and (ii) performance of all obligations of Borrower hereunder has been taken. This Agreement has been duly executed by Borrower, and, assuming the due authorization, execution and delivery by the other parties hereto, constitutes and will constitute a valid and legally binding obligation of Borrower, except (i) as limited by Laws of general application relating to bankruptcy, insolvency and the relief of debtors and (ii) as limited by rules of Law governing specific performance, injunctive relief or other equitable remedies and by general principles of equity.

Section 3.4. Authorized Securities. The Warrants have been duly issued and authorized and any share of Borrower Common Stock issued upon the exercise thereof according to their respective terms, as applicable, will be duly and validly issued, fully paid and non-assessable, free and clear of all Liens and shall not be subject to preemptive or similar rights of stockholders.

Section 3.5. Subsidiaries. Other than its interest in Acuity and Froptix, LLC, Borrower does not own or control, directly or indirectly, any interest in any corporation, partnership, limited liability company, association, other business entity or person. Borrower is not a participant in any joint venture, partnership or similar arrangement. Borrower has not during the period covered by the SEC Reports consolidated or merged with, acquired all or substantially all of the assets of, or acquired the stock of or any interest in any Person.

Section 3.6. Capitalization.

3.6.1. The authorized capital stock of Borrower on the date hereof consists of 225,000,000 shares of Borrower Common Stock, of which 36,505,369 shares of Common Stock are issued and outstanding, and 10,000,000 shares of Borrower Preferred Stock, of which 4,000,000 are designated Borrower Series A Preferred Stock and of which 30,000 are designated Series B Junior Participating Preferred Stock pursuant to the Borrower Certificate as of the date hereof. As of the date of this Agreement, 1,083,404 shares of Borrower Series A Preferred Stock were issued and outstanding and convertible into Borrower Common Stock on a one-for-one basis, and no shares of Borrower Series B Preferred were issued or outstanding. The Borrower Common Stock and the Borrower Preferred Stock have the rights, preferences, privileges and restrictions set forth in the Borrower Certificate and under Delaware Law. All issued and outstanding shares of Borrower's capital stock have been duly authorized and validly issued in compliance with applicable Laws, and are fully paid and nonassessable and free and clear of Liens or third party rights and of any restrictions on transfer, except for transfer restrictions of the federal and state securities laws.

3.6.2. There are no options, warrants, preemptive rights, rights of first refusal, put or call rights or obligations or anti-dilution or other rights to purchase or acquire from Borrower any of Borrower's authorized and unissued capital stock. Except as contemplated by this Agreement, there are (i) no rights to have Borrower's capital stock registered for sale to the public in connection with the Laws of any jurisdiction, (ii) to the Borrower's knowledge, no agreements relating to the voting of Borrower's voting securities and (iii) no restrictions on the transfer of Borrower's capital stock or other equity securities, other than those arising under applicable securities Laws. All outstanding shares, options and warrants were issued pursuant to a valid registration statement filed with the SEC or an exemption from registration under the Securities Act and have been issued in compliance with applicable state securities Laws.

Section 3.7. ~SEC Reports; Financial Statements. Borrower has duly filed all required registration statements, reports, schedules, forms, statements and other documents (including exhibits and all other information incorporated by reference) required to be filed by it with the SEC under the Exchange Act, including pursuant to Sections 13(a) or 15(d) thereof, for the two years preceding the date hereof (the foregoing materials (together with any materials filed by Borrower under the Exchange Act, whether or not required) being collectively referred to herein as the "***SEC Reports"***) on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act and the rules and regulations of the SEC promulgated

thereunder, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The financial statements of Borrower included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the SEC with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with GAAP, except as may be otherwise specified in such financial statements or the notes thereto, and fairly present in all material respects the financial condition, results of operations and cash flows of Borrower as of the dates, and for the periods, indicated therein, subject, in the case of unaudited statements, to normal, year-end audit adjustments.

Section 3.8. Absence of Changes. Since the date of the latest audited financial statements included within the SEC Reports, except as disclosed in the SEC Reports or in Schedule 6.8 of the Schedule of Exceptions or incident to the transactions contemplated hereby or in connection with the Mergers, (i) there has been no event, occurrence or development that, individually or in the aggregate, has had or that would reasonably be expected to result in a Material Adverse Effect on Borrower, (ii) Borrower has not incurred any material liabilities, (iii) Borrower has not altered its method of accounting or the identity of its auditors, except as disclosed in its SEC Reports, (iv) Borrower has not declared or made any dividend or distribution of cash or other property to its stockholders, in their capacities as such, or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock and (v) Borrower has not issued any equity securities. Borrower has not taken any steps to seek protection pursuant to any bankruptcy Law nor does Borrower have any knowledge or reason to believe that its creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact that would reasonably lead a creditor to do so. Borrower is not Insolvent as of the date hereof.

Section 3.9. Sarbanes-Oxley Act. The Borrower and, to Borrower's knowledge, each of its officers and directors are in compliance with, and have complied, in each case in all material respects, with the applicable provisions of the Sarbanes-Oxley Act of 2002 (the "***Sarbanes-Oxley Act"***) and the related rules and regulations promulgated under or pursuant to the Exchange Act. Each SEC Report containing financial statements that has been filed with or submitted to the SEC by Borrower was accompanied by the certifications required to be filed or submitted by the Borrower's chief executive officer and/or chief financial officer, as required, pursuant to the Exchange Act and, at the time of filing or submission of each such certification, such certification was true and accurate and complied in all material respects with the Exchange Act. Neither Borrower nor, to Borrower's knowledge, any of its executive officers has received notice from any Governmental Authority challenging or questioning the accuracy, completeness, form or manner of filing such certifications.

Section 3.10. Internal Controls. Neither Borrower (including, to Borrower's Knowledge, any employee thereof) nor the Borrower's independent auditors has identified or been made aware of (A) any significant deficiency or material weakness in the design or operation of internal controls utilized by Borrower (other than a significant deficiency or material weakness that has been disclosed to the Audit Committee of the Board of Directors of Borrower, and, in the case of a material weakness, that has been disclosed as required in the SEC Reports), (B) any fraud, whether or not material, that involves Borrower's management or other

employees who have a significant role in the preparation of financial statements or the internal controls utilized by Borrower or (C) any claim or allegation regarding any of the foregoing (other than claims or allegations that have been duly investigated and found not to involve any of the foregoing).

Section 3.11. Material Contracts. A list of the oral and written material agreements of Borrower are included as exhibits to the SEC Reports (each, a "***Borrower Material Agreement"***). Borrower and to Borrower's knowledge, each other party thereto, has in all material respects performed all the obligations required to be performed by them to date (or such non performing party has received a valid, enforceable and irrevocable written waiver with respect to its non performance), has received no notice of default and are not in default (with due notice or lapse of time or both) under any Borrower Material Agreement. Borrower has no knowledge of any breach or anticipated breach by the other party to any Borrower Material Agreement.

Section 3.12. Title to Properties and Assets; Liens. Borrower has good and marketable title to its properties and assets, and has good title to all its leasehold interests, in each case subject to no Lien, other than Permitted Liens. With respect to the property and assets it leases, Borrower is in compliance with such leases in all material respects and holds a valid leasehold interest free of all Liens. Borrower's properties and assets are in good condition and repair in all material respects. Borrower does not currently own, and has never owned, any real property.

Section 3.13. Compliance with Other Instruments and Laws. Borrower is not in violation or default of any provision of the Borrower Certificate or the Borrower By-laws, each as amended and in effect on the date hereof. Borrower is not in violation of, default under or breach of any provision of any agreement, instrument, mortgage, deed of trust, loan, contract, commitment, judgment, decree, order or obligation to which it is a party or by which it or any of its properties or assets are bound, which violation, default or breach, individually or in the aggregate, would or could reasonably be expected to have a Material Adverse Effect on Borrower. Borrower is not in violation of any provision of any federal, state or local statute, rule or governmental regulation, judgment, injunction or decree of any governmental authority, which violation, individually or in the aggregate, would or could reasonably be expected to have a Material Adverse Effect on Borrower. The execution and delivery of this Agreement by Borrower, and Borrower's performance of and compliance with the terms hereof, or the consummation of the Merger and the other transactions contemplated hereby, will not result in any violation, breach or default, be in conflict with or constitute, with or without the passage of time or giving of notice, a default under any Borrower Material Agreement or any of the foregoing provisions, require any consent or waiver under any Borrower Material Agreement or any of the foregoing provisions (other than any consents or waivers that have been obtained), result in the creation of any Lien upon any of the properties or assets of Borrower, trigger any right of cancellation, termination or acceleration under any Borrower Material Agreement or any of the foregoing provisions, create any right of payment in any Person (except as contemplated herein), or result in a Material Adverse Effect on Borrower.

Section 3.14. Litigation. There is no action, suit, proceeding or investigation pending or, to Borrower's knowledge, threatened against or affecting Borrower or any of their

respective properties or rights before any court or by or before any governmental agency. Borrower is party or subject to, and none of their respective assets is bound by, the provisions of any order, writ, injunction, judgment or decree of any Governmental Authority. There is no action, suit or proceeding initiated by Borrower currently pending or which Borrower intends to initiate.

Section 3.15. Governmental Consents. No consent, approval or authorization of or registration, qualification, designation, declaration or filing with any governmental authority on the part of Borrower is required in connection with the valid execution and delivery of this Agreement or the consummation of any transaction contemplated hereby, except the qualification or registration (or taking such action as may be necessary to secure an exemption from qualification or registration, if available) of the offer, issuance and sale of the shares of the Warrants and the securities of Borrower issuable upon conversion or exercise of the Warrants under applicable federal and state securities Laws.

Section 3.16. Permits. Borrower has all franchises, permits, licenses, and any similar authority necessary for the conduct of its business as now being conducted by it. Borrower is not in default in any material respect under any of such franchises, permits, licenses, or other similar authority. Borrower has complied in all material respects with all federal, state or foreign Laws applicable to its business.

Section 3.17. Brokers or Finders. Borrower has not engaged any brokers, finders or agents, and Borrower has not incurred, and neither will incur, directly or indirectly, as a result of any action taken by Borrower or any of its affiliates, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement and the transactions contemplated hereby.

Section 3.18. Tax Returns and Payments. Borrower has accurately prepared and timely filed all United States income tax returns and all state and municipal tax returns required to be filed by it, if any, has paid all taxes, assessments, fees and charges owed by it (regardless of whether shown on any such tax return) or has otherwise made adequate provision for the payment of all taxes, assessments, fees and charges owed by it. Borrower has withheld or collected from each payment made to each of its employees, the amount of all taxes (including, but not limited to, federal income taxes, Federal Insurance Contribution Act taxes and Federal Unemployment Tax Act taxes) required to be withheld or collected therefrom, and has paid the same to the proper tax receiving officers or authorized depositaries. Borrower has not been advised in writing (a) that any of its returns have been or are being audited or (b) of any deficiency in assessment or proposed adjustment to its federal, state or other taxes. No assessment or proposed adjustment of Borrower's United States income tax or state or municipal taxes is pending. Borrower is not currently the beneficiary of any extension of time within which to file any tax report or return. No claim has been made by a Governmental Authority in a jurisdiction where Borrower does not file reports and returns that it is or may be subject to taxation by that jurisdiction. There are no Liens on any of the assets of Borrower that arose in connection with the failure or alleged failure to pay any tax. Borrower has withheld and paid all taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, creditor, independent contractor or third party. Borrower has not waived any statute of limitations in respect of taxes or agreed to any extension of time with respect to a tax

assessment or deficiency. Borrower has not entered into a closing agreement pursuant to Section 7121 of the Code. Borrower has not made any payments in connection with the transactions contemplated by this Agreement, or in connection with a combination of the transactions contemplated by this Agreement and any other event, that will be non-deductible under Code Section 280G or subject to the excise tax under Code Section 4999 or that would give rise to any obligation to indemnify any person for any excise tax payable pursuant to Code Section 4999. Borrower is not a party to or bound by any tax allocation or tax sharing agreement or has any current or potential obligation to indemnify any other person with respect to taxes. Except for consolidated income tax liabilities of any wholly-owned corporate subsidiaries it has owned since their inception, Borrower does not have any liability for taxes of any person under Treasury Regulations Section 1.1502-6 (or any corresponding provision of state, local or foreign income tax Law), or as transferee, successor, by contract or otherwise. References in this Section to Borrower include references to any and all subsidiaries of Borrower that may affect its liability. Borrower has not participated in any reportable transaction as contemplated in Treasury Regulations Section 1.6011-4.

Section 3.19. Employees. To Borrower's knowledge, no employee of Borrower, nor any consultant with whom Borrower has contracted, is in violation of any term of any employment contract, noncompetition or proprietary information agreement or any other agreement relating to the right of any such individual to be employed by, or to contract with, Borrower or any judgment, decree or order of any court or administrative agency under which it is subject. Borrower has not received any notice alleging that any such violation has occurred. Borrower is not in default with respect to any obligation to any of its employees. No employee of Borrower is represented by any labor union or covered by any collective bargaining agreement. There is no pending or, to Borrower's knowledge, threatened dispute involving Borrower and any employee or group of its employees. Borrower has complied and is currently complying with all applicable Laws relating to employment and employment practices, terms and conditions of employment, and wages and hours, except for noncompliance that, individually and in the aggregate, would not have a Material Adverse Effect on Borrower.

Section 3.20. Employee Benefit Plans.

3.20.1. Schedule 6.20 of the Schedule of Exceptions sets forth a correct and complete list of all Borrower Employee Benefit Plans. Each Borrower Employee Benefit Plan, and its related documents, has been made available to Froptix and Acuity. No Borrower Employee Benefit Plan is subject to Title IV of ERISA, or Section 412 of the Code, is or has been subject to Sections 4063 or 4064 of ERISA, or is a multi-employer welfare arrangement as defined in Section 3(40) of ERISA. Neither Borrower nor any ERISA Affiliate has any obligation or liability, contingent or otherwise, under Title IV of ERISA with respect to any "pension plan" as defined in Section 3(2) of ERISA. Neither Borrower nor any of it ERISA Affiliates has ever participated in and has never been required to contribute to any "multi employer plan," as defined in Sections 3(37)(A) and 4001(a)(3) of ERISA and Section 414(f) of the Code or any "multiple employer plan" within the meaning of Section 210(a) of ERISA or Section 413(c) of the Code. No Borrower Employee Benefit Plan provides for, nor does Borrower or any of its subsidiaries have any liability for post-employment life insurance or health benefit coverage for any participant or any beneficiary of a participant, except as may be required

under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and at the expense of the participant or the participant's beneficiary.

3.20.2. The Borrower Employee Benefit Plans have been maintained in all material respects in accordance with their terms and with all provisions of ERISA, the Code (including rules and regulations thereunder) and other applicable federal and state Laws and regulations. The exercise price of each option to purchase or acquire from Borrower any of Borrower's authorized and unissued capital stock was intended to constitute a price which is equal to or greater than the fair market value of the underlying shares on the date of grant, as then determined in good faith by the Borrower board of directors.

3.20.3. There are no pending actions, claims or lawsuits that have been asserted or instituted against any Borrower Employee Benefit Plan, the assets of any of the trusts under any Borrower Employee Benefit Plan or the sponsor of any Borrower Employee Benefit Plan, or, to the knowledge of Borrower, against any fiduciary or administrator of any Borrower Employee Benefit Plan with respect to the operation of any Borrower Employee Benefit Plan (other than routine benefit claims), nor does Borrower have any knowledge of facts that could reasonably be expected to form the basis for any such claim or lawsuit.

3.20.4. Neither will the execution and delivery of this Agreement nor the consummation of the transactions contemplated herein (i) result in any payment becoming due to any current or former employee, officer, director or consultant of Borrower or any of its subsidiaries, (ii) increase any benefits otherwise payable under any Borrower Employee Benefit Plan, (iii) result in the acceleration of the time of payment or vesting of any rights with respect to any such benefits under any Borrower Employee Benefit Plan or (iv) require any contributions or payments to fund, or any security to secure, any obligations under any Borrower Employee Benefit Plan. There are no Borrower Employee Benefit Plans that, individually or collectively, could give rise to the payment of any amount in connection with the transactions contemplated by this Agreement, or in connection with a combination of the transactions contemplated by this Agreement and any other event, that would not be deductible pursuant to the terms of Section 280G of the Code.

3.20.5. With respect to each Borrower Employee Benefit Plan intended to qualify under Code Section 401(a) or 403(a), (i) the Internal Revenue Service has issued a favorable determination letter, which has not been revoked, that any such plan is tax-qualified and each trust created thereunder has been determined by the Internal Revenue Service to be exempt from federal income tax under Code Section 501(a); (ii) nothing has occurred which would cause the loss of such qualification or exemption or the imposition of any penalty or tax liability; (iii) no reportable event (within the meaning of Section 4043 of ERISA) has occurred; (iv) there has been no termination or partial termination of such plan within the meaning of Code Section 411(d)(3); and (v) the present value of all liabilities under any such plan will not exceed the current fair market value of the assets of such plan (determined using the actuarial assumption used for the most recent actuarial valuation for such plan).

Section 3.21. Obligations to Related Parties. There are no loans, leases, agreements, understandings, commitments or other continuing transactions between Borrower and any employee, officer, director or member of his or her immediate family or stockholder of Borrower or member of his or her immediate family or any person or entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with any of the foregoing persons. To Borrower's knowledge, none of such persons has any direct or indirect ownership interest in any firm or corporation with which Borrower is affiliated or with which Borrower has a business relationship, or any firm or corporation that competes with Borrower, except in connection with the ownership of stock of publicly-traded companies (but not exceeding 2% of the outstanding capital stock of any such company). No employee, officer, director or member of his or her immediate family or, to Borrower's knowledge, stockholder of Borrower or member of his or her immediate family or any person or entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with any of the foregoing persons, is, directly or indirectly, interested in any material contract with Borrower (other than such contracts as relate to any such person's ownership of capital stock or other securities of Borrower or employment by Borrower). Borrower is not a guarantor or indemnitor of any Indebtedness of any other Person.

Section 3.22. Insurance. Borrower has in full force and effect general commercial, fire and casualty insurance policies and insurance against other hazards, risks and liabilities to persons and property to the extent and in the manner customary for companies in similar businesses similarly situated and sufficient in amount to allow it to replace any of its material properties or assets that might be damaged or destroyed or sufficient to cover liabilities to which Borrower may reasonably become subject.

Section 3.23. Environmental and Safety Laws. Borrower is in compliance with all applicable environmental Laws, rules and regulations except for noncompliance that, individually or in the aggregate, would not or could not reasonably be expected to have a Material Adverse Effect on Borrower. There is no environmental litigation or other environmental proceeding pending or, to Borrower's knowledge, threatened, by any governmental regulatory authority or others with respect to the business of Borrower. No state of facts exists as to environmental matters or Hazardous Substances that involves the reasonable likelihood of a material capital expenditure by Borrower or that may otherwise have a Material Adverse Effect on Borrower. To Borrower's knowledge, no Hazardous Substances have been used, treated, stored or disposed of, or otherwise deposited, in or on the properties owned or leased by Borrower in violation of any applicable environmental Laws.

Section 3.24. No Assets; No Liabilities. Except as specifically disclosed in the SEC Reports, Borrower has the right to own (including without limitation, tangible and intangible, personal and real property) and is not involved in the operation of any business or property. Other than as specifically disclosed in the SEC Reports and those liabilities related to this Agreement set forth in the Schedule of Exceptions, Borrower has no direct or indirect material liability, Indebtedness or obligation (including without limitation, known or unknown, absolute or contingent, liquidated or unliquidated or due or to become due) except relating to the transactions contemplated hereby.

Section 3.25. Disclosure. All disclosures provided by Borrower are true and correct in all material respects and do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. To Borrower's knowledge, no event or circumstance has occurred or information exists with respect to Borrower or its business, properties, operations or financial conditions, which, under applicable Law, rule or regulation, requires public disclosure or announcement by Borrower but which has not been so publicly announced or disclosed.

Section 3.26. Trading Matters. The Borrower Common Stock is quoted on the OTCBB. There is no action or proceeding pending or, to Borrower's knowledge, threatened against Borrower by Nasdaq or NASD, Inc. with respect to any intention by such entities to prohibit or terminate the quotation of any such securities on the OTCBB.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF LENDERS

Except as set forth on the Schedule of Exceptions delivered to Borrower in connection with this Agreement, each of the Frost Group represents and warrants to Borrower as of the date of this Agreement as follows:

Section 4.1. Capacity; Execution of Agreement. The Frost Group has all requisite power, authority, and capacity to enter into this Agreement and to perform the transactions and obligations to be performed by it hereunder. The execution and delivery of this Agreement, and the performance by the Frost Group of the transactions and obligations contemplated hereby have been duly authorized by all requisite corporate action of the Frost Group. This Agreement has been duly executed and delivered by the Frost Group and constitutes a valid and legally binding agreement of the Frost Group, enforceable in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws, both state and federal, affecting the enforcement of creditors' rights or remedies in general from time to time in effect and the exercise by courts of equity powers or their application of principles of public policy.

Section 4.2. Formation and Standing. The Frost Group is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Florida. The Frost Group has the requisite power and authority to own and operate its properties and assets, and to carry on its business as currently conducted.

Section 4.3. Power and Authority. The Frost Group has all requisite legal and other power and authority to execute and deliver this Agreement and to carry out and perform its other obligations hereunder.

Section 4.4. Accredited Investor. The Frost Group is an "accredited investor" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

Section 4.5. Suitability and Sophistication. The Frost Group has (i) such knowledge and experience in financial and business matters that it is capable of independently

evaluating the risks and merits of entering into this Agreement acquiring the Warrants and (ii) independently evaluated the risks and merits of acquiring the Warrants and has independently determined that the Warrants are a suitable investment for it.

Section 4.6. Brokers or Finders. The Frost Group has not engaged any brokers, finders or agents, or incurred, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement and the transactions contemplated hereby.

ARTICLE V
MISCELLANEOUS

Section 5.1. Survival of Representations and Warranties; Indemnification.

(a) The representations and warranties of Borrower and the Frost Group contained in or made pursuant to this Agreement will survive the execution and delivery of this Agreement and the Initial Closing, and for an additional 12 months subsequent to the Initial Closing, and with respect to the representations and warranties of Borrower only, for the longer of an additional 12 months subsequent to any subsequent Advance and the time period during which any Obligations are outstanding.

(b) Borrower hereby agrees to indemnify and hold harmless the Frost Group and, as applicable, its officers, directors, stockholders, agents and representatives from and against any and all claims, demands, losses, damages, expenses or liabilities (including reasonable attorneys' fees) due to or arising out of a material breach of any representation, warranty or covenant provided, made or agreed to by Borrower hereunder or under the Note.

(c) The Frost Group hereby agrees to indemnify and hold harmless Borrower and, as applicable, its officers, managers, directors, stockholders, members, agents and representatives from and against any and all claims, demands, losses, damages, expenses or liabilities (including reasonable attorneys' fees) due to or arising out of a material breach of any representation, warranty or covenant provided, made or agreed to by the Frost Group hereunder.

Section 5.2. Successors and Assigns. This Agreement is binding upon and inures to the benefit of the parties and their successors and assigns. Borrower may not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Frost Group. The Frost Group may assign its rights and obligations hereunder to an entity directly or indirectly controlled by or under common control with the Frost Group.

Section 5.3. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.

Section 5.4. Facsimile. A facsimile copy of an original written signature shall be deemed to have the same effect as an original written signature.

Section 5.5. Captions and Headings. The captions and headings used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

Section 5.6. Notices. Unless otherwise provided herein, all notices, requests, waivers and other communications made pursuant to this Agreement will be in writing and will be conclusively deemed to have been duly given (i) when hand delivered to the other party; (ii) upon receipt, when sent by facsimile to the number set forth below or email to the address set forth below; (iii) five business days after deposit in the U.S. mail, postage prepaid and addressed to the other party at the address set forth below; or (iv) the next business day after deposit with a national overnight delivery service, postage prepaid, addressed to the parties as set forth below with next business day delivery guaranteed. Each person making a communication hereunder by facsimile or email will promptly confirm by telephone to the person to whom such communication was addressed each communication made by it by facsimile or email pursuant hereto but the absence of such confirmation will not affect the validity of any such communication. A party may change or supplement the addresses given below, or designate additional addresses for purposes of this Section 5.6, by giving the other party written notice of the new address in the manner set forth above.

If to Borrower:

eXegenics Inc.
1250 Pittsford-Victor Road
Building 200, Suite 280
Pittsford, New York 14534
Attention: Chief Executive Officer
Phone: _239-561-8966
Facsimile: 239-561-8766

with a copy to:

Harris Beach PLLC
99 Garnsey Road
Pittsford, NY 14534
Attention: Thomas E. Willett
Phone: 585-419-8646
Facsimile: 585-419-8801

If to the Frost Group:

The Frost Group, LLC
4400 Biscayne Blvd.
15th Floor
Miami, FL 33137
Attention: Steven D. Rubin, Esq.
Phone: 305-575-6015
Facsimile: 305-575-6444

with a copy to:

Akerman Senterfitt
One Southeast Third Avenue
27th Floor
Miami, FL 33131
Attention: Teddy D. Klinghoffer, Esq.
Phone: 305- 374-5600
Facsimile: 305-374-5095

Section 5.7. Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of Borrower and the Frost Group.

Section 5.8. Enforceability; Severability. The parties hereto agree that each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If one or more provisions of this Agreement are nevertheless held to be prohibited, invalid or unenforceable under applicable law, such provision will be effective to the fullest extent possible excluding the terms affected by such prohibition, invalidity or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement. If the prohibition, invalidity or unenforceability referred to in the prior sentence requires such provision to be excluded from this Agreement in its entirety, the balance of the Agreement will be interpreted as if such provision were so excluded and will be enforceable in accordance with its terms.

Section 5.9. Governing Law. This Agreement shall be construed in accordance with, and governed in all respects by, the laws of the State of Florida.

Section 5.10. Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF. EACH OF THE PARTIES HERETO ALSO WAIVES ANY BOND OR SURETY OR SECURITY UPON SUCH BOND THAT MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF THE OTHER PARTY. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT. EACH OF THE PARTIES HERETO HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT EACH HAS REVIEWED OR HAD THE OPPORTUNITY TO REVIEW THIS WAIVER WITH ITS RESPECTIVE LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH SUCH LEGAL

COUNSEL. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 5.11. Further Assurances; Access. The Frost Group and Borrower will from time to time and at all times hereafter make, do, execute, or cause or procure to be made, done and executed such further acts, deeds, conveyances, consents and assurances without further consideration, which may reasonably be required to effect the transactions contemplated by this Agreement. Upon reasonable written notice, Borrower shall afford the officers, employees and authorized agents and representatives of the Frost Group reasonable access, during normal business hours, to the offices, properties, books, records and such additional financial and operating data and other information regarding the assets, goodwill and business of the Borrower as the Frost Group may from time to time reasonably request.

Section 5.12. Entire Agreement. This Agreement and all exhibits hereto and thereto constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and no party will be liable or bound to any other party in any manner by any warranties, representations or covenants except as specifically set forth herein or therein.

Section 5.13. Delays or Omissions. No delay or omission to exercise any right power or remedy accruing to any party under this Agreement, or upon any breach or default of any other party under this Agreement, will impair any such right, power or remedy of such non-breaching or non-defaulting party nor will it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor will any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any provisions or conditions of this Agreement, must be in writing and will be effective only to the extent specifically set forth in such writing. Except as otherwise set forth herein, all remedies, either under this Agreement or by law or otherwise afforded to any party, will be cumulative and not alternative.

Section 5.14. Third Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person or entity.

Section 5.15. Equitable Relief. The parties hereto recognize that, if such party fails to perform or discharge any of its obligations under this Agreement, any remedy at law may prove to be inadequate relief to the other parties. Each party hereto therefore agrees that the other parties are entitled to seek temporary and permanent injunctive relief and any other equitable remedy a court of competent jurisdiction may deem appropriate in any such case.

Section 5.16. No Strict Construction. The language used in this Agreement is deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

Section 5.17. Public Announcements. No public announcements shall be made by any party hereto relating to the transactions contemplated by this Agreement without the prior written consent of the Borrower and the Frost Group, such consent not to be unreasonably

withheld, except where required by applicable law; *provided, however*, that in the event of such a legally required disclosure, the disclosing party will consult with the other consenting party with respect to the text of such disclosure and will provide the other consenting party with a copy of the disclosure prior to its publication.

Section 5.18. Expenses. Each party shall bear its own costs and expenses in connection with the transactions contemplated hereby, except to the extent that Lender's Expenses shall be Obligations subject to the provisions hereof.

Section 5.19. Exhibits and Schedule of Exceptions. All exhibits, annexes and schedules, including the Schedule of Exceptions, annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. A disclosure in any particular Schedule of the Schedule of Exceptions or otherwise in this Agreement will be deemed adequate to disclose another exception to a representation or warranty made herein if the disclosure identifies the exception with reasonable particularity so that any exception to any other Schedule is reasonably apparent.

[*Signatures begin on next page*.]

IN WITNESS THEREOF, this Agreement has been executed by the undersigned as of the day, month and year first above written.

eXegenics Inc.

By: /s/ John A. Paganelli
Name: John A. Paganelli
Title: Interim Chief Executive Officer

The Frost Group, LLC

By: /s/ Steven D. Rubin
Name: Steven D. Rubin
Title: Vice President

Acuity Pharmaceuticals, LLC

By: /s/ Dale R. Pfost
Name: Dale R. Pfost
Title: President

EXHIBIT A

FORM OF WARRANT

EXHIBIT B

NOTE

D-1

EXHIBIT C

SUBORDINATION AGREEMENT

EXHIBIT D

NOTICE OF BORROWING

The Frost Group, LLC
4400 Biscayne Blvd.
15th Floor
Miami, FL 33137

RE: Notice of Borrowing

Date ___

Gentlemen:

Pursuant to the terms of a Credit Agreement dated as of March ___, 2007 ("Credit Agreement"), we hereby request you to make an advance in the amount of $___.

This notice constitutes a reaffirmation by the undersigned that the representations and warranties in the Credit Agreement are true, correct and accurate in all material respects as if the date hereof was the Initial Closing Date and a certification by the undersigned that it is in compliance with the Credit Agreement and the Note in all material respects as of the date of this Notice of Borrowing as if the date hereof was the Initial Closing Date.

Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Credit Agreement.

Very truly yours,

eXegenics Inc.

By: _____
Name:
Title:

EXHIBIT 10.3

AMENDED AND RESTATED VENTURE LOAN AND SECURITY AGREEMENT

Executed as of March ___, 2007

Effective as of September 14, 2005

by and among

HORIZON TECHNOLOGY FUNDING COMPANY LLC,
a Delaware limited liability company
76 Batterson Park Road
Farmington, CT 06032

as Lender

and

ACUITY PHARMACEUTICALS, LLC f/k/a e-Acquisition Company II-B, LLC,
a Delaware limited liability company, successor by merger to Acuity Pharmaceuticals, Inc.
3701 Market Street
Philadelphia, PA 19104

And

EXEGENICS, INC.,
a Delaware corporation
1250 Pittsford-Victor Road
Pittsford, NY 14534

collectively, as Borrower

COMMITMENT AMOUNT: $4,000,000

Commitment Termination Date: September 15, 2005

WHEREAS, the Lender and Acuity Corp originally entered into a certain Venture Loan and Security Agreement dated as of September 14, 2005 (the "Original Loan Agreement"), pursuant to which the Lender made a loan to Acuity Corp (the "Original Loan") in the original principal amount of Four Million Dollars ($4,000,000) as evidenced by a certain Secured Promissory Note dared September 14, 2005 executed by Acuity Corp in favor of Lender (the "Original Note");

WHEREAS, in connection with the making of the Loan, Acuity Corp granted each of Horizon Technology Funding Company II LLC and Horizon Technology Funding Company III LLC a warrant to purchase certain preferred stock of Acuity Corp (collectively, the "Original Warrants"), which Original Warrants, by virtue of the Merger (as hereafter defined), will constitute warrants of eXegenics;

WHEREAS, pursuant to a certain Merger Agreement and Plan of Reorganization dated on or about the Execution Date hereof (the "Merger Agreement") by and among Acuity Corp, Froptix Corporation, eXegenics, e-Acquisition Company I-A, LLC, and e-Acquisition Company II-B, LLC, Acuity Corp shall be merged with and into e-Acquisition Company II-B, LLC, with e-Acquisition Company II-B, LLC surviving the merger and changing its name to Acuity Pharmaceuticals, LLC ("Acuity") and pursuant to which the capital stock of Acuity Corp shall be converted into the right to receive capital stock of eXegenics (the "Merger");

WHEREAS, pursuant to the Merger Agreement and by operation of law, all of the debts, liabilities, obligations, restrictions and duties of Acuity Corp shall become the debts, liabilities, obligations, restrictions and duties of Acuity;

WHEREAS, Acuity has requested that the Lender consent to the Merger;

WHEREAS, Lender is willing to consent to the Merger, as evidenced by it execution of this Agreement, provided that (a) Acuity Corp, Acuity and eXegenics execute this Agreement pursuant to which, among other things, Acuity and eXegenics will assume the Obligations and grant a security interest in all of their personal property (as set forth herein) to secure the Obligations, and (b) Acuity and eXegenics execute a secured promissory note which will amend and restate the Original Note;

NOW THEFORE, the Lender, Acuity and eXegenics hereby agree as follows:

AGREEMENT

1. Definitions and Construction.

1.1 Definitions. As used in this Agreement, the following capitalized terms shall have the following meanings:

"Account Control Agreement" means an agreement acceptable to Lender which perfects via control Lender's security interest in Borrower's deposit accounts and/or accounts holding securities.

"Account Collateral" means accounts receivable due or to become due under all purchase orders and contracts for the sale of products or the performance of services or both (and related general intangibles in the nature of rights to payment) and the proceeds thereof.

"Acuity" means Acuity Pharmaceuticals, LLC f/k/a e-Acquisition Company II-B, LLC, a Delaware limited liability company which is a wholly owned subsidiary of eXegenics, successor by merger to Acuity Corp.

"Acuity Corp" means Acuity Pharmaceuticals, Inc, a Delaware corporation.

"Affiliate" means any Person that owns or controls directly or indirectly ten percent (10%) or more of the stock of another entity, any Person that controls or is controlled by or is under common control with such Persons or any Affiliate of such Persons and each of such Person's officers, directors, joint venturers or partners.

"Agreement" means this certain Venture Loan and Security Agreement by and between Borrower and Lender dated as of the date on the cover page hereto (as it may from time to time be amended or supplemented in writing signed by the Borrower and Lender).

"Borrower" means, collectively, Acuity and eXegenics.

"Borrower's Home State" means Pennsylvania.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banking institutions are authorized or required to close in Connecticut or Borrower's Home State.

"Claim" has the meaning given such term in Section 10.3 of this Agreement

"Code" means the Uniform Commercial Code as adopted and in effect in the State of Connecticut, as amended from time to time; provided that if by reason of mandatory provisions of law, the creation and/or perfection or the effect of perfection or non-perfection of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than Connecticut, the term "Code" shall also mean the Uniform Commercial Code as in effect from time to time in such jurisdiction for purposes of the provisions hereof relating to such creation, perfection or effect of perfection or non-perfection.

"Collateral" has the meaning given such term in Section 4.1 of this Agreement.

"Commitment Amount" has the meaning as set forth on the cover page of this Agreement.

"Commitment Fee" has the meaning given such term in Section 2.6(b) of this Agreement.

"Commitment Termination Date" has the meaning set forth on the cover page of this Agreement.

"Default" means any event which with the passing of time or the giving of notice or both would become an Event of Default hereunder.

"Default Rate" means the per annum rate of interest equal to five percent (5%) over the Loan Rate, but such rate shall in no event be more than the highest rate permitted by applicable law to be charged on commercial loans in a default situation.

"Disclosure Schedule" means Exhibit A attached hereto.

"Effective Date" means September 14, 2005.

"Environmental Laws" means all foreign, federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authorities, in each case relating to environmental, health, safety and land use matters, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Solid Waste Disposal Act, the Federal Resource Conservation and Recovery Act, the Toxic Substances Control Act and the Emergency Planning and Community Right-to-Know Act.

"Equity Securities" of any Person means (a) all common stock, preferred stock, participations, shares, partnership interests, membership interests or other equity interests in and of such Person (regardless of how designated and whether or not voting or non-voting) and (b) all warrants, options and other rights to acquire any of the foregoing.

"ERISA" has the meaning given to such term in Section 7.12 of this Agreement.

"Event of Default" has the meaning given to such term in Section 8 of this Agreement.

"Execution Date" means the date on which this Agreement is executed, as set forth on the cover page of this Agreement.

"eXegenics" means eXegenics, Inc., a Delaware corporation.

"Funding Certificate" means a certificate executed by a Responsible Officer of Borrower substantially in the form of Exhibit B or such other form as Lender may agree to accept.

"Funding Date" means the date on which the Loan is made to or on account of Borrower under this Agreement.

"GAAP" means generally accepted accounting principles as in effect in the United States of America from time to time, consistently applied.

"Good Faith Deposit" has the meaning given such term in Section 2.6(a) of this Agreement.

"Governmental Authority" means (a) any federal, state, county, municipal or foreign government, or political subdivision thereof, (b) any governmental or quasi-governmental

agency, authority, board, bureau, commission, department, instrumentality or public body, (c) any court or administrative tribunal, or (d) with respect to any Person, any arbitration tribunal or other non-governmental authority to whose jurisdiction that Person has consented.

"Hazardous Materials" means all those substances which are regulated by, or which may form the basis of liability under, any Environmental Law, including all substances identified under any Environmental Law as a pollutant, contaminant, hazardous waste, hazardous constituent, special waste, hazardous substance, hazardous material, or toxic substance, or petroleum or petroleum derived substance or waste.

"Indebtedness" means, with respect to Borrower, the aggregate amount of, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services (excluding trade payables aged less than one hundred eighty (180) days), (d) all capital lease obligations of such Person, (e) all obligations or liabilities of others secured by a Lien on any asset of such Person, whether or not such obligation or liability is assumed, (f) all obligations or liabilities of others guaranteed by such Person, and (g) any other obligations or liabilities which are required by GAAP to be shown as debt on the balance sheet of such Person. Unless otherwise indicated, the term "Indebtedness" shall include all Indebtedness of Borrower.

"Indemnified Person" has the meaning given such term in Section 10.3 of this Agreement.

"Intellectual Property" means all of Borrower's right, title and interest in and to patents, patent rights (and applications and registrations therefor), trademarks and service marks (and applications and registrations therefor), inventions, copyrights, mask works (and applications and registrations therefor), trade names, trade styles, software and computer programs, source code, object code, trade secrets, methods, processes, know how, drawings, specifications, descriptions, and all memoranda, notes, and records with respect to any research and development, all whether now owned or subsequently acquired or developed by Borrower and whether in tangible or intangible form or contained on magnetic media readable by machine together with all such magnetic media (but not including embedded computer programs and supporting information included within the definition of "goods" under the Code).

"Investment" means the purchase or acquisition of any capital stock, equity interest, or any obligations or other securities of, or any interest in, any Person, or the extension of any advance, loan, extension of credit or capital contribution to, or any other investment in, or deposit with, any Person.

"Landlord Agreement" means an agreement substantially in the form provided by Lender to Borrower or such other form as Lender may agree to accept.

"Lender" means the Lender as set forth on the cover page of this Agreement.

"Lender's Expenses" means all reasonable costs or expenses (including reasonable attorneys' fees and expenses) incurred in connection with the preparation, negotiation, documentation, administration and funding of the Loan Documents; and Lender's reasonable

attorneys' fees, costs and expenses incurred in amending, modifying, enforcing or defending the Loan Documents (including fees and expenses of appeal or review), including the exercise of any rights or remedies afforded hereunder or under applicable law, whether or not suit is brought, whether before or after bankruptcy or insolvency, including without limitation all fees and costs incurred by Lender in connection with Lender's enforcement of its rights in a bankruptcy or insolvency proceeding filed by or against Borrower or its Property.

"Lien" means any voluntary or involuntary security interest, pledge, bailment, lease, mortgage, hypothecation, conditional sales and title retention agreement, encumbrance or other lien with respect to any Property in favor of any Person.

"Loan" means the advance of credit by Lender to Borrower under this Agreement.

"Loan Documents" means, collectively, this Agreement, the Note, any Landlord Agreement, any Account Control Agreement and all other documents, instruments and agreements entered into in connection with this Agreement, all as amended or extended from time to time.

"Loan Rate" means, with respect to the Loan, the per annum rate of interest (based on a year of twelve 30-day months) equal to the greater of (a) 11.50% or (b) 11.50% plus the difference between (i) the one month LIBOR Rate, as reported in the Wall Street Journal, on the date which is five (5) days before the Funding Date for the Loan (or, if such date is not a Business Day, the next earlier Business Day) and (ii) 3.00%. Notwithstanding the foregoing, the Loan Rate shall not exceed the highest rate permitted by applicable law

"Maturity Date" means July 1, 2008, or if earlier, the date of acceleration of the Loan following an Event of Default or the date of prepayment, whichever is applicable.

"Note" means the amended and restated promissory note executed in connection with the Loan in substantially the form of Exhibit C attached hereto.

"Obligations" means all debt, principal, interest, fees, charges, expenses and reasonable attorneys' fees and costs and other amounts, obligations, covenants, and duties owing by Borrower to Lender of any kind and description (whether pursuant to or evidenced by the Loan Documents, or by any other agreement between Lender and Borrower, and whether or not for the payment of money), whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including all Lender's Expenses.

"Officer's Certificate" means a certificate executed by a Responsible Officer substantially in the form of Exhibit E or such other form as Lender may agree to accept.

"Payment Date" has the meaning given such term in Section 2.2(a) of this Agreement.

"Permitted Indebtedness" means and includes:

(a) Indebtedness of Borrower to Lender;

(b) Indebtedness arising from the endorsement of instruments in the ordinary course of business;

(c) Indebtedness existing on the date hereof and set forth on the Disclosure Schedule;

(d) Indebtedness of Borrower in an aggregate original principal amount not to exceed Two Hundred Fifty Thousand Dollars ($250,000) which is secured by Liens permitted under clause (e) of the definition of Permitted Liens;

(e) Other Indebtedness in an aggregate original principal amount not to exceed Five Hundred Thousand Dollars ($500,000);

(f) The Junior Obligations (as defined in the Subordination Agreement); and

(g) Extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower.

"Permitted Liens" means and includes:

(a) the Lien created by this Agreement;

(b) Liens for fees, taxes, levies, imposts, duties or other governmental charges of any kind which are not yet delinquent or which are being contested in good faith by appropriate proceedings which suspend the collection thereof (provided that such appropriate proceedings do not involve any substantial danger of the sale, forfeiture or loss of any material item of Collateral which in the aggregate is material to Borrower and that Borrower has adequately bonded such Lien or reserves sufficient to discharge such Lien have been provided on the books of Borrower);

(c) Liens identified on the Disclosure Schedule;

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other similar Liens arising in the ordinary course of business and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings (provided that such appropriate proceedings do not involve any substantial danger of the sale, forfeiture or loss of any material item of Collateral or Collateral which in the aggregate is material to Borrower and that Borrower has adequately bonded such Lien or reserves sufficient to discharge such Lien have been provided on the books of Borrower);

(e) Liens upon any equipment or other personal property acquired by Borrower after the Effective Date to secure (i) the purchase price of such equipment or other personal property, or (ii) lease obligations or indebtedness incurred solely for the purpose of financing the acquisition of such equipment or other personal property; provided that such Liens

are confined solely to the equipment or other personal property so acquired and the proceeds thereof and the amount secured does not exceed the acquisition price thereof;

(f) licenses of Intellectual Property entered into in the ordinary course of business (whether as licensor or licensee);

(g) bankers' liens, rights of setoff and similar Liens incurred on deposits made in the ordinary course of business and Liens in favor of financial institutions arising in connection with Borrower's deposit accounts or securities accounts held at such institutions to secure customary fees and charges;

(h) any judgment, attachment or similar Lien not resulting in an Event of Default hereunder;

(i) Liens securing the Junior Obligations (as defined in the Subordination Agreement); and

(j) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described above but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase.

"Person" means and includes any individual, any partnership, any corporation, any business trust, any joint stock company, any limited liability company, any unincorporated association or any other entity and any domestic or foreign national, state or local government, any political subdivision thereof, and any department, agency, authority or bureau of any of the foregoing.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, whether tangible or intangible.

"Responsible Officer" has the meaning given such term in Section 6.3 of this Agreement.

"Scheduled Payments" has the meaning given such term in Section 2.2(a) of this Agreement.

"Solvent" has the meaning given such term in Section 5.11 of this Agreement.

"Subordination Agreement" means the Amended and Restated Subordination Agreement, dated on or about the Execution Date, among Borrower, Lender and The Frost Group, LLC.

"Subsidiary" means any corporation or other entity of which a majority of the outstanding Equity Securities entitled to vote for the election of directors or other governing body (otherwise than as the result of a default) is owned by Borrower directly or indirectly through Subsidiaries.

"Transfer" has the meaning given such term in Section 7.4 of this Agreement.

1.2 Construction. References in this Agreement to "Articles," "Sections," "Exhibits," "Schedules" and "Annexes" are to recitals, articles, sections, exhibits, schedules and annexes herein and hereto unless otherwise indicated. References in this Agreement and each of the other Loan Documents to any document, instrument or agreement shall include (a) all exhibits, schedules, annexes and other attachments thereto, (b) all documents, instruments or agreements issued or executed in replacement thereof, and (c) such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement or any other Loan Document shall refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. The words "include" and "including" and words of similar import when used in this Agreement or any other Loan Document shall not be construed to be limiting or exclusive. Unless otherwise indicated in this Agreement or any other Loan Document, all accounting terms used in this Agreement or any other Loan Document shall be construed, and all accounting and financial computations hereunder or thereunder shall be computed, in accordance with GAAP, and all terms describing Collateral shall be construed in accordance with the Code. The terms and information set forth on the cover page of this Agreement are incorporated into this Agreement.

2. Loan; Repayment.

2.1 Commitment.

(a) The Commitment Amount. Subject to the terms and conditions of this Agreement and relying upon the representations and warranties herein set forth as and when made or deemed to be made, Lender agrees to lend to Borrower on or before Commitment Termination Date, the Loan in the amount of Commitment Amount.

(b) The Loan and the Note. The obligation of Borrower to repay the unpaid principal amount of and interest on the Loan shall be evidenced by the Note issued to Lender.

(c) Use of Proceeds. The proceeds of the Loan shall be used solely for working capital or general corporate purposes of Borrower.

(d) Termination of Commitment to Lend. Notwithstanding anything in the Loan Documents, Lender's obligation to lend the undisbursed portion of the Commitment Amount to Borrower hereunder shall terminate on the earlier of (i) at Lender's sole election, the occurrence of any Default or Event of Default hereunder, and (ii) the Commitment Termination Date. Notwithstanding the foregoing, Lender's obligation to lend the undisbursed portion of the Commitment Amount to Borrower shall terminate if, in Lender's sole judgment, there has been a material adverse change in the general affairs, management, results of operations, condition (financial or otherwise) or prospects of Borrower, whether or not arising from transactions in the ordinary course of business, or there has been any material adverse deviation by Borrower from the business plan of Borrower presented to Lender on or before the date of this Agreement.

2.2 Payments.

(a) Scheduled Payments. Borrower shall make payments of accrued interest only on the outstanding principal amount of the Loan through and including July 1, 2007 and commencing August 1, 2007, twelve (12) level payments of principal plus accrued interest on the outstanding principal amount of the Loan on each subsequent Payment Date as set forth in the Note (collectively, the "Scheduled Payments"). Borrower shall make such Scheduled Payments commencing on the date set forth in the Note and continuing thereafter on the first Business Day of each calendar month (each a "Payment Date") through the Maturity Date. In any event, all unpaid principal and accrued interest shall be due and payable in full on the Maturity Date.

(b) Interim Payment. Unless the Funding Date for the Loan is the first day of a calendar month, Borrower shall pay the per diem interest (accruing at the Loan Rate from the Funding Date through the last day of that month) payable with respect to the Loan on the first Business Day of the next calendar month.

(c) Payment of Interest. Borrower shall pay interest on the Loan at a per annum rate of interest equal to the Loan Rate. All computations of interest (including interest at the Default Rate, if applicable) shall be based on a year of twelve 30-day months. Notwithstanding any other provision hereof, the amount of interest payable hereunder shall not in any event exceed the maximum amount permitted by the law applicable to interest charged on commercial loans.

(d) Application of Payments. All payments received by Lender prior to an Event of Default shall be applied as follows: (1) first, to Lender's Expenses then due and owing; and (2) second to all Scheduled Payments then due and owing (provided, however, if such payments are not sufficient to pay the whole amount then due, such payments shall be applied first to unpaid interest at the Loan Rate, then to the remaining amount then due). After an Event of Default, all payments and application of proceeds shall be made as set forth in Section 9.7.

(e) Late Payment Fee. Borrower shall pay to Lender a late payment fee equal to four percent (4%) of any Scheduled Payment not paid when due, provided that such fee shall not be due if (i) such late payment is the first such late payment made by Borrower and (ii) such payment is paid within ten (10) days of when such payment is due.

(f) Default Rate. Borrower shall pay interest at a per annum rate equal to the Default Rate on any amounts required to be paid by Borrower under this Agreement or the other Loan Documents (including Scheduled Payments), payable with respect to any Loan, accrued and unpaid interest, and any fees or other amounts which remain unpaid after such amounts are due. If an Event of Default has occurred and the Obligations have been accelerated (whether automatically or by Lender's election), Borrower shall pay interest on the aggregate, outstanding accelerated balance hereunder from the date of the Event of Default until all Events of Default are cured, at a per annum rate equal to the Default Rate.

2.3 Prepayments.

(a) Mandatory Prepayment Upon Acceleration. If the Loan is accelerated following the occurrence of an Event of Default pursuant to Section 9.1(a) hereof, then Borrower, in addition to any other amounts which may be due and owing hereunder, shall immediately pay to Lender the amount set forth in Section 2.3(b) below, as if the Borrower had opted to prepay on the date of such acceleration.

(b) Upon three (3) Business Days' prior written notice to Lender, Borrower may, at its option, prepay all, and not less than all, of the Loan in full by paying to Lender an amount equal to (i) any accrued and unpaid interest on the outstanding principal balance of the Loan; (ii) an amount equal to (A) if the Loan is prepaid within twenty-four (24) months from the Effective Date three (3%) percent of the then outstanding principal balance of the Loan, or (B) if the Loan is prepaid more than twenty-four (24) months after the Effective Date, one and one-half (1.5%) percent of the then outstanding principal balance of the Loan; (iii) the outstanding principal balance of the Loan; and (iv) all other sums, if any, that shall have become due and payable hereunder.

2.4 Other Payment Terms.

(a) Place and Manner. Borrower shall make all payments due to Lender in lawful money of the United States. All payments of principal, interest, fees and other amounts payable by Borrower hereunder shall be made, in immediately available funds, not later than 10:00 a.m. Connecticut time, on the date on which such payment is due. Borrower shall make such payments to Lender via wire transfer as follows:

Payment via wire transfer:

Credit:	Horizon Technology Funding Company LLC
Bank Name:	ABN Amro/LaSalle Bank NA CDO Trust Services
Bank Address:	135 South LaSalle Street, Suite 1625 Chicago, Illinois 60603 Attn: Greg Meyers, 312-904-0283
Account No.:	2090067 – Trust GL
FFCT-Reference Account Number	721771.1
ABA Routing No.:	071000505
Reference:	Acuity Invoice #_____

(b) Date. Whenever any payment is due hereunder on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall be included in the computation of interest or fees, as the case may be.

2.5 Procedure for Making Loan.

(a) Notice. Whenever Borrower desires that Lender make the Loan, Borrower shall notify Lender of the date on which Borrower desires Lender to make the Loan. Borrower's notice shall be made at least five (5) Business Days in advance of the desired Funding Date, unless Lender elects at its sole discretion to allow the Funding Date to be within five (5) Business Days of the notice. Borrower's execution and delivery to Lender of the Note shall be Borrower's agreement to the terms and calculations thereunder with respect to the Loan. Lender's obligation to make the Loan shall be expressly subject to the satisfaction of the conditions set forth in Sections 3.1 and 3.2.

(b) Loan Rate Calculation. Prior to each Funding Date, Lender shall establish the Loan Rate with respect to the Loan, which shall be set forth in the Note to be executed by Borrower and shall be conclusive in the absence of a manifest error.

(c) Disbursement. Lender shall disburse the proceeds of the Loan by wire transfer to Borrower at the account specified in the Funding Certificate for the Loan.

2.6 Good Faith Deposit; Legal and Closing Expenses; and Commitment Fee.

(a) Good Faith Deposit. Borrower has delivered to Lender a good faith deposit in the amount of Twenty Thousand Dollars ($20,000) (the "Good Faith Deposit"). The Good Faith Deposit will be utilized to pay the Commitment Fee.

(b) Legal, Due Diligence and Documentation Expenses. Borrower shall pay to Lender concurrently with its execution and delivery of this Agreement Lender's legal, due diligence and documentation expenses in connection with the negotiation and documentation of this Agreement and the Loan Documents; provided, however, that Borrower shall not be liable for any such expenses which in the aggregate exceed Ten Thousand Dollars ($10,000).

(c) Commitment Fee. On the Effective Date, Borrower paid Lender a commitment fee in the amount of Twenty-Five Thousand Dollars ($25,000) (the "Commitment Fee"). The Commitment Fee shall be retained by Lender and be deemed fully earned upon receipt. No further amounts shall be due hereunder as a commitment or similar fee.

2.7 Joint Liability. Each of Acuity and eXegenics covenants and agrees with Lender as follows:

(a) The Obligations include all present and future indebtedness, duties, obligations, and liabilities, whether now existing or contemplated or hereafter arising, of each of Acuity and eXegenics, other than Permitted Indebtedness.

(b) Reference in this Agreement and the other Loan Documents to the "Borrower" shall mean each or any one of Acuity and eXegenics, jointly and severally, unless the context requires otherwise.

(c) Acuity and eXegenics in the discretion of their respective management are to agree among themselves as to the allocation of the benefits of the proceeds of the Loan,

provided, however, that each shall be deemed to have represented and warranted to Lender at the time of allocation that each use of proceeds is permitted under this Agreement.

(d) For administrative convenience, Acuity hereby irrevocably appoints eXegenics as its attorney-in-fact, with power of substitution (with the prior written consent of Lender in the exercise of its sole and absolute discretion), in its respective name or in the name of eXegenics or otherwise to take any and all actions with respect to this Agreement, the other Loan Documents, the Obligations and/or the Collateral (including, without limitation, the proceeds thereof) as eXegenics may so elect from time to time, including, without limitation, actions to enter into, execute, deliver, amend, modify, restate, substitute, extend and/or renew this Agreement, any other Loan Documents, security agreements, mortgages, deposit account agreements, instruments, certificates, waivers, letter of credit applications, releases, documents and agreements from time to time. The foregoing appointment is coupled with an interest, cannot be revoked without the prior written consent of Lender, and may be exercised from time to time through eXegenics' Responsible Officer, or other Person or Persons designated by eXegenics to act from time to time on behalf of eXegenics.

(e) Lender assumes no responsibility or liability for any errors, mistakes, and/or discrepancies in the oral, telephonic, written or other transmissions of any instructions, orders, requests and confirmations between Lender and any one or more of Acuity and eXegenics in connection with the Loan or any other transaction in connection with the provisions of this Agreement.

2.8 Inter-Company Debt, Contribution. Without implying any limitation on the joint and several nature of the Obligations, Lender agrees that, notwithstanding any other provision of this Agreement, Acuity and eXegenics may create reasonable inter-company indebtedness between or among them with respect to the allocation of the benefits and proceeds of any Loan under this Agreement. Acuity and eXegenics agree among them, and Lender consents to that agreement, that each of them shall have rights of contribution from all of the other to the extent either of them incurs Obligations in excess of the proceeds of the Loan received by, or allocated to purposes for the direct benefit of, such company. All such indebtedness and rights shall be, and are hereby agreed by Acuity and eXegenics to be, subordinate in priority and payment to the indefeasible repayment in full in cash of the Obligations, and, during the existence of an Event of Default unless Lender agrees in writing otherwise, shall not be exercised or repaid in whole or in part until all of the Obligations have been indefeasibly paid in full in cash. Each of Acuity and eXegenics agrees that all of such inter-company indebtedness and rights of contribution are part of the Collateral and secure the Obligations.

2.9 Borrower is an Integrated Group. Each of Acuity and eXegenics hereby represents and warrants to Lender that it will derive benefits, directly and indirectly, from the Loan, both in its separate capacity and as a member of the integrated group to which it belongs and because the successful operation of the integrated group is dependent upon the continued successful performance of the functions of the integrated group as a whole, (i) the terms of the Loan provided under this Agreement are more favorable than would otherwise be obtainable by them individually, and (ii) the additional administrative and other costs and reduced

flexibility associated with individual loan arrangements which would otherwise be required if obtainable would substantially reduce the value to them of the Loan.

2.10 Primary Obligations. The obligations and liabilities of each of Acuity and eXegenics under this Agreement shall be primary, direct and immediate, shall not be subject to any counterclaim, recoupment, set off, reduction or defense based upon any claim that Acuity and eXegenics may have against the other Borrower, Lender and/or any guarantor and shall not be conditional or contingent upon pursuit or enforcement by Lender of any remedies it may have against Acuity and eXegenics with respect to this Agreement, or any of the other Loan Documents, whether pursuant to the terms hereof or thereof or by operation of law. Without limiting the generality of the foregoing, Lender shall not be required to make any demand upon either Acuity or eXegenics, or to sell the Collateral or otherwise pursue, enforce or exhaust its remedies against either Acuity or eXegenics or the Collateral either, before, concurrently with or after pursuing or enforcing its rights and remedies hereunder. Any one or more successive or concurrent actions or proceedings may be brought against either Acuity and eXegenics under this Section 2.10, either in the same action, if any, brought against any one or more of Acuity and eXegenics or in separate actions or proceedings, as often as Lender may deem expedient or advisable. Without limiting the foregoing, it is specifically understood that any modification, limitation or discharge of any of the liabilities or obligations of either Acuity or eXegenics, any other guarantor or any obligor under any of the Loan Documents, arising out of, or by virtue of, any bankruptcy, arrangement, reorganization or similar proceeding for relief of debtors under federal or state law initiated by or against Acuity and eXegenics, in their respective capacities as a Borrower, or under any of the Loan Documents shall not modify, limit, lessen, reduce, impair, discharge, or otherwise affect the liability of each Borrower under this Agreement in any manner whatsoever, and this Section 2.10 shall remain and continue in full force and effect. It is the intent and purpose of this Section 2.10 that each of Acuity and eXegenics shall and does hereby waive all rights and benefits which might accrue to any guarantor by reason of any such proceeding, Acuity and eXegenics each agree that they shall be liable for the full amount of the obligations and liabilities under this Section 2.10 regardless of, and irrespective of, any modification, limitation or discharge of the liability of any one or more of either Acuity or eXegenics, any guarantor or any obligor under any of the Loan Documents, that may result from any such proceedings.

3. Conditions of Loan.

3.1 Conditions Precedent to Closing. At the time of the execution and delivery of this Agreement, Lender shall have received, in form and substance reasonably satisfactory to Lender, all of the following:

(a) Amended and Restated Loan Agreement. This Agreement duly executed by Borrower and Lender.

(b) Note. Borrower shall have duly executed and delivered to Lender the Note in the amount of the Loan, which shall cause the Original Note to be cancelled and Lender shall deliver the Original Note to Lender marked cancelled.

(c) UCC Financing Statements. Lender shall have received such documents, instruments and agreements, including UCC financing statements or amendments to UCC financing statements, as Lender shall reasonably request to evidence the perfection and priority of the security interests granted to Lender pursuant to Section 4. Borrower authorizes Lender to file any UCC financing statements, continuations of or amendments to UCC financing statements it deems necessary to perfect its security interest in the Collateral.

(d) Secretary's Certificate. A certificate of the secretary or assistant secretary of each Borrower with copies of the following documents attached: (i) the certificate of incorporation and bylaws of Borrower certified by Borrower as being complete and in full force and effect on the date thereof, (ii) incumbency and representative signatures, and (iii) resolutions authorizing the execution and delivery of this Agreement and the Note.

(e) Good Standing Certificates. A good standing certificate from each Borrower's state of incorporation and the state in which Borrower's principal place of business is located, each dated as of a recent date.

(f) Consents. All necessary consents of shareholders and other third parties with respect to the execution, delivery and performance of this Agreement, the Warrant and the other Loan Documents.

(g) No Default. No Default or Event of Default shall have occurred and be continuing.

(h) Other Documents. Such other documents and completion of such other matters, as Lender may deem necessary or appropriate.

3.2 Post-Closing Conditions. Within thirty (30) days of the Execution Date, the Borrower shall deliver the following to the Lender:

(a) Account Control Agreements. Account Control Agreements for all of Borrower's deposit accounts and accounts holding securities duly executed by all of the parties thereto, in the forms provided by Lender.

(b) Certificate of Insurance. Evidence of the insurance coverage required by Section 6.8 of this Agreement.

(c) Other Documents. Such other documents and completion of such other matters, as Lender may deem necessary or appropriate.

3.3 Covenant to Deliver. Borrower agrees (not as a condition but as a covenant) to deliver to Lender each item required to be delivered to Lender as a condition to the Loan, if the Loan is advanced. Borrower expressly agrees that the extension of the Loan prior to the receipt by Lender of any such item shall not constitute a waiver by Lender of Borrower's obligation to deliver such item, and any such extension in the absence of a required item shall be in Lender's sole discretion.

4. Creation of Security Interest.

4.1 Grant of Security Interest. Borrower grants to Lender a valid and continuing security interest in all presently existing and hereafter acquired or arising Collateral in order to secure prompt, full and complete payment of any and all Obligations and in order to secure prompt, full and complete performance by Borrower of each of its covenants and duties under each of the Loan Documents. The "Collateral" shall mean and include all right, title, interest, claims and demands of Borrower in and to all personal property of Borrower, including without limitation, all of the following:

(a) All goods (and embedded computer programs and supporting information included within the definition of "goods" under the Code) and equipment now owned or hereafter acquired, including, without limitation, all laboratory equipment, computer equipment, office equipment, machinery, fixtures, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing, and all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing, wherever located;

(b) All inventory now owned or hereafter acquired, including, without limitation, all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products including such inventory as is temporarily out of Borrower's custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and Borrower's books relating to any of the foregoing;

(c) All contract rights and general intangibles (except to the extent included within the definition of Intellectual Property), now owned or hereafter acquired, including, without limitation, goodwill, license agreements, franchise agreements, blueprints, drawings, purchase orders, customer lists, route lists, infringements, claims, software, computer programs, computer disks, computer tapes, literature, reports, catalogs, design rights, income tax refunds, payment intangibles, commercial tort claims, payments of insurance and rights to payment of any kind;

(d) All now existing and hereafter arising accounts, contract rights, royalties, license rights, license fees and all other forms of obligations owing to Borrower arising out of the sale or lease of goods, the licensing of technology or the rendering of services by Borrower (subject, in each case, to the contractual rights of third parties to require funds received by Borrower to be expended in a particular manner), whether or not earned by performance, and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by Borrower and Borrower's books relating to any of the foregoing;

(e) All documents, cash, deposit accounts, letters of credit (whether or not the letter of credit is evidenced by a writing), certificates of deposit, instruments, promissory notes, chattel paper (whether tangible or electronic) and investment property, including, without limitation, all securities, whether certificated or uncertificated, security entitlements, securities accounts, commodity contracts and commodity accounts, and all financial assets held in any

securities account or otherwise, wherever located, now owned or hereafter acquired and Borrower's books relating to the foregoing, excluding, in each case, any debt or equity securities of eXegenics in any Subsidiary or other Investment, including, without limitation, Froptix, LLC; and

(f) Any and all claims, rights and interests in any of the above and all substitutions for, additions and accessions to and proceeds thereof, including, without limitation, insurance, condemnation, requisition or similar payments and proceeds of the sale or licensing of Intellectual Property to the extent such proceeds no longer constitute Intellectual Property; but

(g) Notwithstanding the foregoing, the Collateral shall not include any Intellectual Property; provided, however, that the Collateral shall include all accounts receivables, accounts, and general intangibles that consist of rights to payment and proceeds from the sale, licensing or disposition of all or any part, or rights in, the foregoing (the "Rights to Payment"). Notwithstanding the foregoing, if a judicial authority (including a U.S. Bankruptcy Court) holds that a security interest in the underlying Intellectual Property is necessary to have a security interest in the Rights to Payment, then the Collateral shall automatically, and effective as of the date hereof, include the Intellectual Property to the extent necessary to permit perfection of Lender's security interest in the Rights to Payment.

4.2 After-Acquired Property. If Borrower shall at any time acquire a commercial tort claim, as defined in the Code, Borrower shall immediately notify Lender in writing signed by Borrower of the brief details thereof and grant to Lender in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to Lender.

4.3 Duration of Security Interest. Lender's security interest in the Collateral shall continue until the payment in full and the satisfaction of all Obligations and termination of Lender's commitment to fund any Loan, whereupon such security interest shall terminate. Lender shall, at Borrower's sole cost and expense, execute such further documents and take such further actions as may be reasonably necessary to make effective the release contemplated by this Section 4.3, including duly executing and delivering termination statements for filing in all relevant jurisdictions under the Code.

4.4 Location and Possession of Collateral. The Collateral is and shall remain in the possession of Borrower at its location listed on the cover page hereof or as set forth in the Disclosure Schedule and at any additional bona fide places of business established by Borrower from time to time. Borrower shall remain in full possession, enjoyment and control of the Collateral (except only as may be otherwise required by Lender for perfection of its security interest therein) and so long as no Event of Default has occurred and is continuing, shall be entitled to manage, operate and use the same and each part thereof with the rights and franchises appertaining thereto; provided that the possession, enjoyment, control and use of the Collateral shall at all time be subject to the observance and performance of the terms of this Agreement.

4.5 Delivery of Additional Documentation Required. Borrower shall from time to time execute and deliver to Lender, at the request of Lender, all financing statements and other documents Lender may reasonably request, in form satisfactory to Lender, to perfect and

continue Lender's perfected security interests in the Collateral and in order to consummate fully all of the transactions contemplated under the Loan Documents.

4.6 Right to Inspect. Lender (through any of its officers, employees, or agents) shall have the right, upon reasonable prior notice, from time to time during Borrower's usual business hours, to inspect Borrower's books and records and to make copies thereof and to inspect, test, and appraise the Collateral in order to verify Borrower's financial condition or the amount, condition of, or any other matter relating to, the Collateral.

4.7 Protection of Intellectual Property. Borrower shall use its commercially reasonable efforts to (i) protect, defend and maintain the validity and enforceability of its material Intellectual Property and promptly advise Lender in writing of material infringements which become known to Borrower, and (ii) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public except in the ordinary course of Borrower's business.

4.8 Lien Subordination. Lender agrees that the Liens granted to it hereunder in equipment and other personal property acquired by Borrower after the date hereof ("Third Party Equipment") which secure Indebtedness constituting Permitted Indebtedness under subclause (d) of the definition of Permitted Indebtedness shall be subordinate to the Liens of existing or future lenders providing equipment financing and equipment lessors for Third Party Equipment or if such lenders prohibit the granting of Liens to other lenders, Lender shall release its Lien on such Third Party Equipment and the proceeds thereof; provided that such Liens are confined solely to the equipment so financed and the proceeds thereof and are Permitted Liens. Upon the expiration of the Liens of such other lenders or the termination of their prohibition of Liens in favor of other Lenders, the Third Party Equipment shall automatically become part of the Collateral, and Lender is authorized at that time to amend any filed financing statement(s) to reflect that change. Notwithstanding the foregoing, the Obligations hereunder shall not be subordinate in right of payment to any obligations to other lenders, equipment lenders or equipment lessors and Lender's rights and remedies hereunder shall not in any way be subordinate to the rights and remedies of any such lenders or equipment lessors. So long as no Event of Default has occurred and is continuing, Lender agrees to execute and deliver such agreements and documents as may be reasonably requested by Borrower from time to time which set forth the lien subordination described in this Section 4.8 and are reasonably acceptable to Lender. Lender shall have no obligation to execute any agreement or document which would impose obligations, restrictions or lien priority on Lender which are less favorable to Lender than those described in this Section 4.8.

5. Representations and Warranties. Except as set forth in the Disclosure Schedule, Borrower represents and warrants as follows:

5.1 Organization and Qualification. Acuity is a limited liability company and eXegenics is a corporation, in each case, duly organized and validly existing and in good standing under the laws of its state of incorporation or organization and qualified and licensed to do business in, and is in good standing in, any state in which the conduct of its business or its ownership of Property requires that it be so qualified or in which the Collateral is located,

except for such states as to which any failure to so qualify would not have a material adverse effect on Borrower.

5.2 Authority. Borrower has all necessary power and authority to execute, deliver, and perform in accordance with the terms thereof, the Loan Documents to which it is a party. Borrower has all requisite power and authority to own and operate its Property and to carry on its businesses as now conducted.

5.3 Conflict with Other Instruments, etc. Neither the execution and delivery of any Loan Document to which Borrower is a party nor the consummation of the transactions therein contemplated nor compliance with the terms, conditions and provisions thereof will conflict with or result in a breach of any of the terms, conditions or provisions of the certificate of incorporation, the by-laws, or any other organizational documents of Borrower or any law or any regulation, order, writ, injunction or decree of any court or governmental instrumentality or any material agreement or instrument to which Borrower is a party or by which it or any of its Property is bound or to which it or any of its Property is subject, or constitute a default thereunder or result in the creation or imposition of any Lien, other than Permitted Liens.

5.4 Authorization; Enforceability. The execution and delivery of this Agreement, the granting of the security interest in the Collateral, the incurring of the Loan, the execution and delivery of the other Loan Documents to which Borrower is a party and the consummation of the transactions herein and therein contemplated have each been duly authorized by all necessary action on the part of Borrower. No authorization, consent, approval, license or exemption of, and no registration, qualification, designation, declaration or filing with, or notice to, any Person is, was or will be necessary to (i) the valid execution and delivery of any Loan Document to which Borrower is a party, (ii) the performance of Borrower's obligations under any Loan Document, or (iii) the granting of the security interest in the Collateral, except for filings in connection with the perfection of the security interest in any of the Collateral. The Loan Documents have been duly executed and delivered and constitute legal, valid and binding obligations of Borrower, enforceable in accordance with their respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general application relating to or affecting the enforcement of creditors' rights or by general principles of equity.

5.5 No Prior Encumbrances. Borrower has good and marketable title to the Collateral, free and clear of Liens except for Permitted Liens. Borrower has good title and ownership of, or is licensed under, all of Borrower's current Intellectual Property. Borrower has not received any communications alleging that Borrower has violated, or by conducting its business as proposed, would violate any proprietary rights of any other Person. Borrower has no knowledge of any infringement or violation by it of the intellectual property rights of any third party and has no knowledge of any violation or infringement by a third party of any of its Intellectual Property. The Collateral and the Intellectual Property constitute substantially all of the assets and property of Borrower.

5.6 Name; Location of Chief Executive Office, Principal Place of Business and Collateral. Except for Cytoclonal Pharmaceutics Inc., Borrower has not done business under any name other than that specified on the signature page hereof. Borrower's jurisdiction of

incorporation, chief executive office, principal place of business, and the place where Borrower maintains its records concerning the Collateral are presently located in the state and at the address set forth on the cover page of this Agreement. The Collateral is presently located at the address set forth on the cover page hereof or as set forth in the Disclosure Schedule.

5.7 Litigation. There are no actions or proceedings pending by or against Borrower before any court or administrative agency in which an adverse decision could have a material adverse effect on Borrower or the aggregate value of the Collateral. Borrower does not have knowledge of any such pending or threatened actions or proceedings.

5.8 Financial Statements. All financial statements relating to Borrower or any Affiliate that have been or may hereafter be delivered by Borrower to Lender present fairly in all material respects Borrower's financial condition as of the date thereof and Borrower's results of operations for the period then ended.

5.9 No Material Adverse Effect. No event has occurred and no condition exists which could reasonably be expected to have a material adverse effect on the financial condition, business or operations of Borrower since December 31, 2006.

5.10 Full Disclosure. No representation, warranty or other statement made by Borrower in any Loan Document (including the Disclosure Schedule), certificate or written statement furnished to Lender contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained in such certificates or statements not misleading. There is no fact known to Borrower which materially adversely affects, or which could in the future be reasonably expected to materially adversely affect, its ability to perform its obligations under this Agreement.

5.11 Solvency, Etc. Borrower is Solvent (as defined below) and, after the execution and delivery of the Loan Documents and the consummation of the transactions contemplated thereby, Borrower will be Solvent. "Solvent" means, with respect to any Person on any date, that on such date (a) the fair value of the property of such Person is greater than the fair value of the liabilities (including, without limitation, contingent liabilities) of such Person, (b) the present fair saleable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital.

5.12 Subsidiaries. Acuity has no Subsidiaries.

5.13 Catastrophic Events; Labor Disputes. None of Borrower or its properties is or has been affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or other casualty that could reasonably be expected to have a material adverse effect on the financial condition, business or operations of Borrower. There are no disputes presently subject to grievance procedure, arbitration or litigation under any of the collective bargaining agreements, employment contracts or employee

welfare or incentive plans to which Borrower is a party, and there are no strikes, lockouts, work stoppages or slowdowns, or, to the knowledge of Borrower, jurisdictional disputes or organizing activity occurring or threatened which could reasonably be expected to have a material adverse effect on the financial condition, business or operations of Borrower.

5.14 Certain Agreements of Officers, Employees and Consultants.

(a) No Violation. To the knowledge of Borrower, no officer, employee or consultant of Borrower is, or is now expected to be, in violation of any term of any employment contract, proprietary information agreement, nondisclosure agreement, noncompetition agreement or any other material contract or agreement or any restrictive covenant relating to the right of any such officer, employee or consultant to be employed by Borrower because of the nature of the business conducted or to be conducted by Borrower or relating to the use of trade secrets or proprietary information of others, and to Borrower's knowledge, the continued employment of Borrower's officers, employees and consultants does not subject Borrower to any material liability for any claim or claims arising out of or in connection with any such contract, agreement, or covenant.

(b) No Present Intention to Terminate. To the knowledge of Borrower, no officer of Borrower, and no employee or consultant of Borrower whose termination, either individually or in the aggregate, could reasonably be expected to have a material adverse effect on the financial condition, business or operations of Borrower, has any present intention of terminating his or her employment or consulting relationship with Borrower.

5.15 Patient Enrollment. Acuity has enrolled not less than ten (10) human patients in a Phase II clinical trial of its "Cand5" drug for the treatment of age related macular degeneration, which trial has been approved by the FDA to be conducted in the United States.

6. Affirmative Covenants. Borrower, until the full and complete payment of the Obligations, covenants and agrees that:

6.1 Good Standing. Borrower shall maintain its corporate existence and its good standing in its jurisdiction of incorporation and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a material adverse effect on the financial condition, operations or business of Borrower. Borrower shall maintain in force all licenses, approvals and agreements, the loss of which could reasonably be expected to have a material adverse effect on its financial condition, operations or business.

6.2 Government Compliance. Borrower shall comply with all statutes, laws, ordinances and government rules and regulations to which it is subject, noncompliance with which could reasonably be expected to materially adversely affect the financial condition, operations or business of Borrower.

6.3 Financial Statements, Reports, Certificates. Acuity shall deliver to Lender: (a) as soon as available, but in any event within thirty (30) days after the end of each month, a company prepared balance sheet, income statement and cash flow statement covering Acuity's operations during such period, certified by Acuity's president, treasurer or chief financial officer

(each, a "Responsible Officer"); (b) as soon as available, but in any event within one hundred twenty (120) days after the end of Acuity's fiscal year, audited financial statements of Acuity prepared in accordance with GAAP, together with an unqualified opinion on such financial statements of a nationally recognized or other independent public accounting firm reasonably acceptable to Lender; and (c) as soon as available, but in any event within ninety (90) days after the end of Acuity's fiscal year or the date of Acuity's board of directors' adoption, Acuity's operating budget and plan for the next fiscal year; and (d) such other financial information as Lender may reasonably request from time to time. eXegenics, promptly as they are available and in any event: (x) at the time of filing of eXegenics' Form 10-K with the Securities and Exchange Commission after the end of each fiscal year of eXegenics, the financial statements of eXegenics filed with such Form 10-K; and (y) at the time of filing of eXegenics' Form 10-Q with the Securities and Exchange Commission after the end of each of the first three fiscal quarters of eXegenics, the financial statements of eXegenics filed with such Form 10-Q. In addition, Borrower shall deliver to Lender (i) promptly upon becoming available, copies of all statements, reports and notices sent or made available generally by Borrower to its security holders; (ii) immediately upon receipt of notice thereof, a report of any material legal actions pending or threatened against Borrower or the commencement of any action, proceeding or governmental investigation involving Borrower is commenced that is reasonably expected to result in damages or costs to Borrower of One Hundred Fifty Thousand Dollars ($150,000) or more; and (iii) such other financial information as Lender may reasonably request from time to time.

6.4 Certificates of Compliance. Each time financial statements are furnished pursuant to Section 6.3 above, Borrower shall deliver to Lender an Officer's Certificate signed by a Responsible Officer in the form of, and certifying to the matters set forth in Exhibit E hereto.

6.5 Notice of Defaults. As soon as possible, and in any event within five (5) days after the discovery of a Default or an Event of Default, Borrower shall provide Lender with an Officer's Certificate setting forth the facts relating to or giving rise to such Default or Event of Default and the action which Borrower proposes to take with respect thereto.

6.6 Taxes. Borrower shall make due and timely payment or deposit of all federal, state, and local taxes, assessments, or contributions required of it by law or imposed upon any Property belonging to it, and will execute and deliver to Lender, on demand, appropriate certificates attesting to the payment or deposit thereof; and Borrower will make timely payment or deposit of all tax payments and withholding taxes required of it by applicable laws, including those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income taxes, and will, upon request, furnish Lender with proof satisfactory to Lender indicating that Borrower has made such payments or deposits; provided that Borrower need not make any payment if the amount or validity of such payment is contested in good faith by appropriate proceedings which suspend the collection thereof (provided that such proceedings do not involve any substantial danger of the sale, forfeiture or loss of any material item of Collateral or Collateral which in the aggregate is material to Borrower and that Borrower has adequately bonded such amounts or reserves sufficient to discharge such amounts have been provided on the books of Borrower).

6.7 Use; Maintenance. Borrower shall keep and maintain all items of equipment and other similar types of personal property that form any significant portion or portions of the Collateral in good operating condition and repair and shall make all necessary replacements thereof and renewals thereto so that the value and operating efficiency thereof shall at all times be maintained and preserved. Borrower shall not permit any such material item of Collateral to become a fixture to real estate or an accession to other personal property, without the prior written consent of Lender. Borrower shall not permit any such material item of Collateral to be operated or maintained in violation of any applicable law, statute, rule or regulation. With respect to items of leased equipment (to the extent Lender has any security interest in any residual Borrower's interest in such equipment under the lease), Borrower shall keep, maintain, repair, replace and operate such leased equipment in accordance with the terms of the applicable lease.

6.8 Insurance. Borrower shall keep its business and the Collateral insured for risks and in amounts, and as Lender may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are satisfactory to Lender. All property policies shall have a lender's loss payable endorsement showing Lender as an additional loss payee and all liability policies shall show Lender as an additional insured and all policies shall provide that the insurer must give Lender at least thirty (30) days notice before canceling its policy. At Lender's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Lender's option, be payable to Lender on account of the Obligations. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy, toward the replacement or repair of destroyed or damaged property; provided that (i) any such replaced or repaired property (a) shall be of equal or like value as the replaced or repaired Collateral and (b) shall be deemed Collateral in which Lender has been granted a first priority security interest and (ii) after the occurrence and during the continuation of an Event of Default all proceeds payable under such casualty policy shall, at the option of Lender, be payable to Lender, on account of the Obligations. If Borrower fails to obtain insurance as required under Section 6.8 or to pay any amount or furnish any required proof of payment to third persons and Lender, Lender may make all or part of such payment or obtain such insurance policies required in Section 6.8, and take any action under the policies Lender deems prudent. On or prior to the first Funding Date and prior to each policy renewal, Borrower shall furnish to Lender certificates of insurance or other evidence satisfactory to Lender that insurance complying with all of the above requirements is in effect.

6.9 Security Interest. Assuming the proper filing of one or more financing statement(s) identifying the Collateral with the proper state and/or local authorities, the security interests in the Collateral granted to Lender pursuant to this Agreement (i) constitute and will continue to constitute first priority security interests (except to the extent any Permitted Liens may have a superior priority to Lender's Lien under this Agreement) and (ii) are and will continue to be superior and prior to the rights of all other creditors of Borrower (except to the extent of such Permitted Liens).

6.10 Further Assurances. At any time and from time to time Borrower shall execute and deliver such further instruments and take such further action as may reasonably be

requested by Lender to make effective the purposes of this Agreement, including without limitation, the continued perfection and priority of Lender's security interest in the Collateral.

7. Negative Covenants. Borrower, until the full and complete payment of the Obligations, covenants and agrees that Borrower shall not, except in accordance with the terms of the Merger Agreement:

7.1 Chief Executive Office. Change its name, jurisdiction of incorporation, chief executive office, principal place of business or any of the items set forth in Section 1 of the Disclosure Schedule without thirty (30) days prior written notice to Lender.

7.2 Collateral Control. Subject to its rights under Sections 4.4 and 7.4, remove any items of Collateral from Borrower's facility located at the address set forth on the cover page hereof or as set forth on the Disclosure Schedule.

7.3 Liens. Create, incur, assume or suffer to exist any Lien of any kind upon any of Borrower's Property, whether now owned or hereafter acquired, except Permitted Liens.

7.4 Other Dispositions of Collateral. Convey, sell, lease or otherwise dispose of all or any part of the Collateral to any Person (collectively, a "Transfer"), except for: (i) Transfers of inventory in the ordinary course of business; or (ii) Transfers of worn-out or obsolete equipment.

7.5 Distributions. (i) Pay any dividends or make any distributions on its Equity Securities; (ii) purchase, redeem, retire, defease or otherwise acquire for value any of its Equity Securities (other than repurchases pursuant to the terms of employee stock purchase plans, employee restricted stock agreements or similar arrangements in an aggregate amount not to exceed One Hundred Thousand Dollars ($100,000)); (iii) return any capital to any holder of its Equity Securities as such; (iv) make any distribution of assets, Equity Securities, obligations or securities to any holder of its Equity Securities as such; or (v) set apart any sum for any such purpose; provided, however, Borrower may pay dividends payable solely in common stock and provided that Borrower may pay stock dividends required by the terms of any existing class of preferred stock of Borrower so long as no Event of Default has occurred and remains uncured.

7.6 Intentionally Omitted.

7.7 Change in Ownership. (a) Engage in or permit any of its Subsidiaries to engage in any business other than (i) the businesses currently engaged in by Borrower or reasonably related thereto (ii) or the business of any entity acquired by eXegenics, by purchase of stock or assets, by merger or otherwise, after the date hereof or (b) have a material change in its ownership of greater than forty-nine percent (49%) (other than by the sale by Borrower of Borrower's Equity Securities in a public offering or to venture capital investors so long as Borrower identifies to Lender the venture capital investors prior to the closing of the investment).

7.8 Transactions With Affiliates. Enter into any contractual obligation with any Affiliate or engage in any other transaction with any Affiliate except upon terms at least as favorable to Borrower as an arms-length transaction with Persons who are not Affiliates of

Borrower; provided that Lender hereby consents to the incurrence of the Junior Obligations (as defined in the Subordination Agreement).

7.9 Indebtedness Payments. (i) Prepay, redeem, purchase, defease or otherwise satisfy in any manner prior to the scheduled repayment thereof any Indebtedness for borrowed money (other than amounts due or permitted to be prepaid under this Agreement) or lease obligations, (ii) amend, modify or otherwise change the terms of any Indebtedness for borrowed money or lease obligations so as to accelerate the scheduled repayment thereof or (iii) repay any notes to officers, directors or shareholders.

7.10 Indebtedness. Create, incur, assume or permit to exist any Indebtedness except Permitted Indebtedness.

7.11 Intentionally Omitted.

7.12 Compliance. Become an "investment company" or a company controlled by an "investment company" under the Investment Company Act of 1940 or undertake as one of its important activities extending credit to purchase or carry margin stock, or use the proceeds of any Loan for that purpose; fail to meet the minimum funding requirements of the Employment Retirement Income Security Act of 1974, and its regulations, as amended from time to time ("ERISA"), permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a material adverse effect on Borrower's business or operations or could reasonably be expected to cause a material adverse change, or permit any of its Subsidiaries to do so.

7.13 Maintenance of Accounts. (i) Maintain any deposit account or account holding securities owned by Borrower except accounts with respect to which Lender is able to take such actions as it deems necessary to obtain a perfected security interest in such accounts through one or more Account Control Agreements; or (ii) grant or allow any other Person (other than Lender) to perfect a security interest in, or enter into any agreements with any Persons (other than Lender) accomplishing perfection via control as to, any of its deposit accounts or accounts holding securities.

7.14 Negative Pledge Regarding Intellectual Property. Create, incur, assume or suffer to exist any Lien of any kind upon any Intellectual Property or Transfer any Intellectual Property, whether now owned or hereafter acquired, other than (a) with respect to Intellectual Property related to Borrower's core ophthalmology technology, non-exclusive licenses entered into in the ordinary course of business and (b) with respect to Intellectual Property outside of the field of ophthalmology, licenses entered into in the ordinary course of business and/or consistent with Borrower's current business plan.

7.15 No Restriction on Acquisitions. Notwithstanding anything contained herein to the contrary, this Agreement shall not restrict or otherwise limit eXegenics from making acquisitions of or Investments in any Person, by stock or asset purchase, merger, combination or otherwise, and Lender's consent shall not be required for eXegenics to engage in such a transaction.

8. Events of Default. Any one or more of the following events shall constitute an "Event of Default" by Borrower under this Agreement:

8.1 Failure to Pay. If Borrower fails to pay when due and payable or when declared due and payable in accordance with the Loan Documents: (i) any Scheduled Payment within three (3) days of the relevant Payment Date or the Maturity Date, or (ii) any other portion of the Obligations within ten (10) days after receipt of written notice from Lender that such payment is due.

8.2 Certain Covenant Defaults. If Borrower fails to perform any obligation under Section 6.8 or violates any of the covenants contained in Section 7 of this Agreement.

8.3 Other Covenant Defaults. If Borrower fails or neglects to perform, keep, or observe any other material term, provision, condition, covenant, or agreement contained in this Agreement (other than as set forth in Sections 8.1, 8.2 or 8.4 through 8.13), in any of the other Loan Documents and Borrower has failed to cure such default within thirty (30) days of the occurrence of such default. During this thirty (30) day period, the failure to cure the default is not an Event of Default.

8.4 Intentionally Omitted.

8.5 Seizure of Assets, Etc. If any material portion of Borrower's assets is attached, seized, subjected to a writ or distress warrant, or is levied upon, or comes into the possession of any trustee, receiver or Person acting in a similar capacity and such attachment, seizure, writ or distress warrant or levy has not been removed, discharged or rescinded within ten (10) days, or if Borrower is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or if a judgment or other claim becomes a lien or encumbrance upon any material portion of Borrower's assets, or if a notice of lien, levy, or assessment is filed of record with respect to any of Borrower's assets by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, and the same is not paid within ten (10) days after Borrower receives notice thereof; provided that none of the foregoing shall constitute an Event of Default where such action or event is stayed or an adequate bond has been posted pending a good faith contest by Borrower.

8.6 Service of Process. The service of process upon Lender seeking to attach by a trustee or other process any funds of the Borrower on deposit or otherwise held by Lender, or the delivery upon Lender of a notice of foreclosure by any Person seeking to attach or foreclose on any funds of the Borrower on deposit or otherwise held by Lender, or the delivery of a notice of foreclosure or exclusive control to any entity holding or maintaining Borrower's deposit accounts or accounts holding securities by any Person (other than Lender) seeking to foreclose or attach any such accounts or securities.

8.7 Default on Indebtedness. One or more defaults shall exist under any agreement with any third party or parties which consists of the failure to pay any Indebtedness at maturity or which results in a right by such third party or parties, whether or not exercised, to accelerate the maturity of Indebtedness in an aggregate amount in excess of One Hundred Fifty

Thousand Dollars ($150,000) or a default shall exist under any financing agreement with Lender or any of Lender's Affiliates.

8.8 Judgments. If a judgment or judgments for the payment of money in an amount, individually or in the aggregate, of at least One Hundred Fifty Thousand Dollars ($150,000) shall be rendered against Borrower and shall remain unsatisfied and unstayed for a period of ten (10) days or more.

8.9 Misrepresentations. If any material representation in any warranty, representation, statement, certification, or report made to Lender by Borrower or any officer, employee, agent, or director of Borrower shall prove to have been false or misleading in any material respect when made or furnished.

8.10 Intentionally Omitted.

8.11 Unenforceable Loan Document. If any Loan Document shall in any material respect cease to be, or Borrower shall assert that any Loan Document is not, a legal, valid and binding obligation of Borrower enforceable in accordance with its terms.

8.12 Involuntary Insolvency Proceeding. If a proceeding shall have been instituted in a court having jurisdiction in the premises seeking a decree or order for relief in respect of Borrower in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or for the appointment of a receiver, liquidator, assignee, custodian, trustee (or similar official) of Borrower or for any substantial part of its Property, or for the winding-up or liquidation of its affairs, and such proceeding shall remain undismissed or unstayed and in effect for a period of sixty (60) consecutive days or such court shall enter a decree or order granting the relief sought in such proceeding.

8.13 Voluntary Insolvency Proceeding. If Borrower shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian (or other similar official) of Borrower or for any substantial part of its Property, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action in furtherance of any of the foregoing.

9. Lender's Rights and Remedies.

9.1 Rights and Remedies. Upon the occurrence of any Default or Event of Default, Lender shall not have any further obligation to advance money or extend credit to or for the benefit of Borrower. In addition, upon the occurrence of an Event of Default and during the continuance thereof, Lender shall have the rights, options, duties and remedies of a secured party as permitted by law and, in addition to and without limitation of the foregoing, Lender may, at its election, without notice of election and without demand, do any one or more of the following, all of which are authorized by Borrower:

(a) Acceleration of Obligations. Declare all Obligations, whether evidenced by this Agreement, by any of the other Loan Documents, or otherwise, including (i) any accrued and unpaid interest, (ii) the amounts which would have otherwise come due under Section 2.3(b)(ii) if the Loan had been voluntarily prepaid, (iii) the unpaid principal balance of the Loan and (iv) all other sums, if any, that shall have become due and payable hereunder, immediately due and payable (provided that upon the occurrence of an Event of Default described in Section 8.12 or 8.13 all Obligations shall become immediately due and payable without any action by Lender);

(b) Protection of Collateral. Make such payments and do such acts as Lender considers necessary or reasonable to protect Lender's security interest in the Collateral. Borrower agrees to assemble the Collateral if Lender so requires and to make the Collateral available to Lender as Lender may designate. Borrower authorizes Lender and its designees and agents to enter the premises where the Collateral is located, to take and maintain possession of the Collateral, or any part of it, and to pay, purchase, contest, or compromise any Lien which in Lender's determination appears or is claimed to be prior or superior to its security interest and to pay all expenses incurred in connection therewith. With respect to any of Borrower's owned premises, Borrower hereby grants Lender a license to enter into possession of such premises and to occupy the same, without charge, for up to one hundred twenty (120) days in order to exercise any of Lender's rights or remedies provided herein, at law, in equity, or otherwise;

(c) Preparation of Collateral for Sale. Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Collateral. Lender and its agents and any purchasers at or after foreclosure are hereby granted a non-exclusive, irrevocable, perpetual, fully paid, royalty-free license or other right, solely pursuant to the provisions of this Section 9.1, to use, without charge, Borrower's Intellectual Property, including without limitation, labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any Property of a similar nature, now or at any time hereafter owned or acquired by Borrower or in which Borrower now or at any time hereafter has any rights; provided that such license shall only be exercisable in connection with the disposition of Collateral upon Lender's exercise of its remedies hereunder;

(d) Sale of Collateral. Sell the Collateral at either a public or private sale, or both, by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including Borrower's premises) as Lender determines are commercially reasonable; and

(e) Purchase of Collateral. Credit bid and purchase all or any portion of the Collateral at any public sale.

Any deficiency that exists after disposition of the Collateral as provided above will be paid immediately by Borrower.

9.2 Set Off Right. Lender may set off and apply to the Obligations any and all indebtedness at any time owing to or for the credit or the account of Borrower or any other assets of Borrower in Lender's possession or control.

9.3 Effect of Sale. Upon the occurrence of an Event of Default and during the continuance thereof, to the extent permitted by law, Borrower covenants that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor claim, take nor insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisement of the Collateral or any part thereof prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and, to the full extent legally permitted, except as to rights expressly provided herein, hereby expressly waives for itself and on behalf of each and every Person, except decree or judgment creditors of Borrower, acquiring any interest in or title to the Collateral or any part thereof subsequent to the date of this Agreement, all benefit and advantage of any such law or laws, and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to Lender, but will suffer and permit the execution of every such power as though no such power, law or laws had been made or enacted. Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of Borrower in and to the Property sold, and shall be a perpetual bar, both at law and in equity, against Borrower, its successors and assigns, and against any and all Persons claiming the Property sold or any part thereof under, by or through Borrower, its successors or assigns.

9.4 Power of Attorney in Respect of the Collateral. Borrower does hereby irrevocably appoint Lender (which appointment is coupled with an interest), the true and lawful attorney in fact of Borrower with full power of substitution, for it and in its name to file any notices of security interests, financing statements and continuations and amendments thereof pursuant to the Code or federal law, as may be necessary to perfect, or to continue the perfection of Lender's security interests in the Collateral. Borrower does hereby irrevocably appoint Lender (which appointment is coupled with an interest) on the occurrence of an Event of Default and during the continuance thereof, the true and lawful attorney in fact of Borrower with full power of substitution, for it and in its name: (a) to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all rents, issues, profits, avails, distributions, income, payment draws and other sums in which a security interest is granted under Section 4 with full power to settle, adjust or compromise any claim thereunder as fully as if Lender were Borrower itself; (b) to receive payment of and to endorse the name of Borrower to any items of Collateral (including checks, drafts and other orders for the payment of money) that come into Lender's possession or under Lender's control; (c) to make all demands, consents and waivers, or take any other action with respect to, the Collateral; (d) in Lender's discretion to file any claim or take any other action or proceedings, either in its own name or in the name of Borrower or otherwise, which Lender may reasonably deem necessary or appropriate to protect and preserve the right, title and interest of Lender in and to the Collateral; (e) endorse Borrower's name on any checks or other forms of payment or security; (f) sign Borrower's name on any invoice or bill of lading for any account or drafts against account debtors; (g) make, settle, and adjust all claims under Borrower's insurance policies; (h) settle and adjust disputes and claims about the accounts directly with account debtors, for amounts and on terms Lender determines reasonable; (i) transfer the Collateral into the name of Lender

or a third party as the Code permits; and (j) to otherwise act with respect thereto as though Lender were the outright owner of the Collateral.

9.5 Lender's Expenses. If Borrower fails to pay any amounts or furnish any required proof of payment due to third persons or entities, as required under the terms of this Agreement, then Lender may do any or all of the following: (a) make payment of the same or any part thereof; or (b) obtain and maintain insurance policies of the type discussed in Section 6.8 of this Agreement, and take any action with respect to such policies as Lender deems prudent. Any amounts paid or deposited by Lender shall constitute Lender's Expenses, shall be immediately due and payable, shall bear interest at the Default Rate and shall be secured by the Collateral. Any payments made by Lender shall not constitute an agreement by Lender to make similar payments in the future or a waiver by Lender of any Event of Default under this Agreement. Borrower shall pay all reasonable fees and expenses, including without limitation, Lender's Expenses, incurred by Lender in the enforcement or attempt to enforce any of the Obligations hereunder not performed when due.

9.6 Remedies Cumulative. Lender's rights and remedies under this Agreement, the Loan Documents, and all other agreements shall be cumulative. Lender shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by Lender of one right or remedy shall be deemed an election, and no waiver by Lender of any Event of Default on Borrower's part shall be deemed a continuing waiver. No delay by Lender shall constitute a waiver, election, or acquiescence by it.

9.7 Application of Collateral Proceeds. The proceeds and/or avails of the Collateral, or any part thereof, and the proceeds and the avails of any remedy hereunder (as well as any other amounts of any kind held by Lender, at the time of or received by Lender after the occurrence of an Event of Default hereunder) shall be paid to and applied as follows:

(a) First, to the payment of out-of-pocket costs and expenses, including all amounts expended to preserve the value of the Collateral, of foreclosure or suit, if any, and of such sale and the exercise of any other rights or remedies, and of all proper fees, expenses, liability and advances, including reasonable legal expenses and attorneys' fees, incurred or made hereunder by Lender, including, without limitation, Lender's Expenses;

(b) Second, to the payment to Lender of the amount then owing or unpaid on the Loan for Scheduled Payments, any accrued and unpaid interest, the amounts which would have otherwise come due under Section 2.3(b)(ii), if the Loan had been voluntarily prepaid, the principal balance of the Loan, and all other Obligations with respect to the Loan (provided, however, if such proceeds shall be insufficient to pay in full the whole amount so due, owing or unpaid upon the Loan, then to the unpaid interest thereon, then to the amounts which would have otherwise come due under Section 2.3(b)(ii), if the Loan had been voluntarily prepaid, then to the principal balance of the Loan, and then to the payment of other amounts then payable to Lender under any of the Loan Documents); and

(c) Third, to the payment of the surplus, if any, to Borrower, its successors and assigns, or to the Person lawfully entitled to receive the same.

9.8 Reinstatement of Rights. If Lender shall have proceeded to enforce any right under this Agreement or any other Loan Document by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then and in every such case (unless otherwise ordered by a court of competent jurisdiction), Lender shall be restored to its former position and rights hereunder with respect to the Property subject to the security interest created under this Agreement.

10. Waivers; Indemnification.

10.1 Demand; Protest. Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees at any time held by Lender on which Borrower may in any way be liable.

10.2 Lender's Liability for Collateral. So long as Lender complies with its obligations, if any, under the Code, Lender shall not in any way or manner be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage thereto occurring or arising in any manner or fashion from any cause other than Lender's gross negligence or willful misconduct; (c) any diminution in the value thereof; or (d) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person whomsoever. All risk of loss, damage or destruction of the Collateral shall be borne by Borrower.

10.3 Indemnification and Waiver. Whether or not the transactions contemplated hereby shall be consummated:

(a) General Indemnity. Borrower agrees upon demand to pay or reimburse Lender for all liabilities, obligations and out-of-pocket expenses, including Lender's Expenses and reasonable fees and expenses of counsel for Lender from time to time arising in connection with the enforcement or collection of sums due under the Loan Documents, and in connection with any amendment or modification of the Loan Documents or any "work-out" in connection with the Loan Documents. Borrower shall indemnify, reimburse and hold Lender, and each of its respective successors, assigns, agents, attorneys, officers, directors, shareholders, servants, agents and employees (each an "Indemnified Person") harmless from and against all liabilities, losses, damages, actions, suits, demands, claims of any kind and nature (including claims relating to environmental discharge, cleanup or compliance), all costs and expenses whatsoever to the extent they may be incurred or suffered by such Indemnified Person in connection therewith (including reasonable attorneys' fees and expenses), fines, penalties (and other charges of any applicable Governmental Authority), licensing fees relating to any item of Collateral, damage to or loss of use of property (including consequential or special damages to third parties or damages to Borrower's property), or bodily injury to or death of any person (including any agent or employee of Borrower) (each, a "Claim"), directly or indirectly relating to or arising out of the use of the proceeds of the Loan or otherwise, the falsity of any representation or warranty of Borrower or Borrower's failure to comply with the terms of this Agreement or any other Loan Document. The foregoing indemnity shall cover, without limitation, (i) any Claim in connection with a design or other defect (latent or patent) in any item of equipment or product included in the Collateral, (ii) any Claim for infringement of any patent, copyright, trademark or other

intellectual property right, (iii) any Claim resulting from the presence on or under or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Materials on the premises owned, occupied or leased by Borrower, including any Claims asserted or arising under any Environmental Law, (iv) any Claim for negligence or strict or absolute liability in tort, or (v) any Claim asserted as to or arising under any Account Control Agreement or any Landlord Agreement; provided, however, Borrower shall not indemnify Lender for any liability incurred by Lender as a direct and sole result of Lender's gross negligence or willful misconduct. Such indemnities shall continue in full force and effect, notwithstanding the expiration or termination of this Agreement. Upon Lender's written demand, Borrower shall assume and diligently conduct, at its sole cost and expense, the entire defense of Lender, each of its partners, and each of their respective, agents, employees, directors, officers, shareholders, successors and assigns against any indemnified Claim described in this Section 10.3(a). Borrower shall not settle or compromise any Claim against or involving Lender without first obtaining Lender's written consent thereto, which consent shall not be unreasonably withheld.

(b) Waiver. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR ANYWHERE ELSE, BORROWER AGREES THAT IT SHALL NOT SEEK FROM LENDER UNDER ANY THEORY OF LIABILITY (INCLUDING ANY THEORY IN TORTS), ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES.

(c) Survival; Defense. The obligations in this Section 10.3 shall survive payment of all other Obligations pursuant to Section 12.8. At the election of any Indemnified Person, Borrower shall defend such Indemnified Person using legal counsel satisfactory to such Indemnified Person in such Person's reasonable discretion, at the sole cost and expense of Borrower. All amounts owing under this Section 10.3 shall be paid within thirty (30) days after written demand.

11. Notices. Unless otherwise provided in this Agreement, all notices or demands by any party relating to this Agreement or any other agreement entered into in connection herewith shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by certified mail, postage prepaid, return receipt requested, by prepaid nationally recognized overnight courier, or by prepaid facsimile to Borrower or to Lender, as the case may be, at their respective addresses set forth below:

If to Borrower: eXegenics, Inc.
3701 Market Street
Philadelphia, PA 19104
Attention:
Fax: (215) 966-6186
Ph: (215) 966-6180

If to Lender: Horizon Technology Funding Company LLC
76 Batterson Park Road
Farmington, CT 06032
Attention: Legal Department
Fax: (860) 676-8655
Ph: (860) 676-8654

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

12. General Provisions.

12.1 Successors and Assigns. This Agreement and the Loan Documents shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties; provided, however, neither this Agreement nor any rights hereunder may be assigned by Borrower without Lender's prior written consent, which consent may be granted or withheld in Lender's sole discretion. Lender shall have the right without the consent of or notice to Borrower to sell, transfer, assign, negotiate, or grant participations in all or any part of, or any interest in Lender's rights and benefits hereunder. Lender may disclose the Loan Documents and any other financial or other information relating to Borrower or any Subsidiary to any potential participant or assignee of the Loan, provided that such participant or assignee agrees to protect the confidentiality of such documents and information using the same measures that it uses to protect its own confidential information.

12.2 Time of Essence. Time is of the essence for the performance of all obligations set forth in this Agreement.

12.3 Severability of Provisions. Each provision of this Agreement shall be several from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

12.4 Entire Agreement; Construction; Amendments and Waivers.

(a) Entire Agreement. This Agreement and each of the other Loan Documents dated as of the date hereof, taken together, constitute and contain the entire agreement between Borrower and Lender and supersede any and all prior agreements, negotiations, correspondence, understandings and communications between the parties, whether written or oral, respecting the subject matter hereof. Borrower acknowledges that it is not relying on any representation or agreement made by Lender or any employee, attorney or agent thereof, other than the specific agreements set forth in this Agreement and the Loan Documents.

(b) Construction. This Agreement is the result of negotiations between and has been reviewed by each of Borrower and Lender executing this Agreement as of the date hereof and their respective counsel; accordingly, this Agreement shall be deemed to be the product of the parties hereto, and no ambiguity shall be construed in favor of or against Borrower or Lender. Borrower and Lender agree that they intend the literal words of this Agreement and the other Loan Documents and that no parol evidence shall be necessary or appropriate to establish Borrower's or Lender's actual intentions.

(c) Amendments and Waivers. Any and all amendments and modifications of this Agreement or of any of the other Loan Documents shall not be effective without the written consent of Lender and Borrower. Any and all discharges or waivers of, or

consents to any departures from any provision of this Agreement or of any of the other Loan Documents shall not be effective without the written consent of Lender. Any waiver or consent with respect to any provision of the Loan Documents shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances. Any amendment, modification, waiver or consent affected in accordance with this Section 12.4 shall be binding upon Lender and on Borrower.

12.5 Reliance by Lender. All covenants, agreements, representations and warranties made herein by Borrower shall be deemed to be material to and to have been relied upon by Lender, notwithstanding any investigation by Lender.

12.6 No Set-Offs by Borrower. All sums payable by Borrower pursuant to this Agreement or any of the other Loan Documents shall be payable without notice or demand and shall be payable in United States Dollars without set-off or reduction of any manner whatsoever.

12.7 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement.

12.8 Survival. All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any Obligations or commitment to fund remain outstanding. The obligations of Borrower to indemnify Lender with respect to the expenses, damages, losses, costs and liabilities described in Section 10.3 shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Lender have run.

13. Relationship of Parties. Borrower and Lender acknowledge, understand and agree that the relationship between Borrower, on the one hand, and Lender, on the other, is, and at all time shall remain solely that of a borrower and lender. Lender shall not under any circumstances be construed to be a partner or a joint venturer of Borrower or any of its Affiliates; nor shall Lender under any circumstances be deemed to be in a relationship of confidence or trust or a fiduciary relationship with Borrower or any of its Affiliates, or to owe any fiduciary duty to Borrower or any of its Affiliates. Lender does not undertake or assume any responsibility or duty to Borrower or any of its Affiliates to select, review, inspect, supervise, pass judgment upon or otherwise inform Borrower or any of its Affiliates of any matter in connection with its or their Property, any Collateral held by Lender or the operations of Borrower or any of its Affiliates. Borrower and each of its Affiliates shall rely entirely on their own judgment with respect to such matters, and any review, inspection, supervision, exercise of judgment or supply of information undertaken or assumed by Lender in connection with such matters is solely for the protection of Lender and neither Borrower nor any Affiliate is entitled to rely thereon.

14. Confidentiality. All information (other than periodic reports filed by Borrower with the Securities and Exchange Commission) disclosed by Borrower to Lender in writing or through inspection pursuant to this Agreement that is marked confidential shall be considered

confidential. Lender agrees to use the same degree of care to safeguard and prevent disclosure of such confidential information as Lender uses with its own confidential information, but in any event no less than a reasonable degree of care. Lender shall not disclose such information to any third party (other than to Lender's partners, attorneys, governmental regulators, or auditors, or to Lender's subsidiaries and affiliates and prospective transferees and purchasers of the Loan, all subject to the same confidentiality obligation set forth herein or as required by law, regulation, subpoena or other order to be disclosed) and shall use such information only for purposes of evaluation of its investment in Borrower and the exercise of Lender's rights and the enforcement of its remedies under this Agreement and the other Loan Documents. The obligations of confidentiality shall not apply to any information that (a) was known to the public prior to disclosure by Borrower under this Agreement, (b) becomes known to the public through no fault of Lender, (c) is disclosed to Lender by a third party having a legal right to make such disclosure, or (d) is independently developed by Lender. Notwithstanding the foregoing, Lender's agreement of confidentiality shall not apply if Lender has acquired indefeasible title to any Collateral or in connection with any enforcement or exercise of Lender's rights and remedies under this Agreement following an Event of Default, including the enforcement of Lender's security interest in the Collateral.

15. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CONNECTICUT, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH OF BORROWER AND LENDER HEREBY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF CONNECTICUT. BORROWER AND LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

16. No Defaults. By virtue of its execution and delivery of this Amended and Restated Loan Agreement, Lender hereby acknowledges as of the Execution Date that it has no knowledge of any Default or Event of Default by Borrower under the Original Loan Agreement or Original Note.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Execution Date first above written.

BORROWER:
ACUITY PHARMACEUTICALS, LLC
f/k/a e-ACQUISITION COMPANY II-B,
LLC, a Delaware limited liability company
successor by merger to ACUITY
PHARMACEUTICALS, INC.

By: _____
Name: _____
Title: _____

EXEGENICS, INC.

By: _____
Name: _____
Title: _____

LENDER:
HORIZON TECHNOLOGY FUNDING COMPANY LLC
By: Horizon Technology Finance, LLC, its sole
member

By: _____
Name: Gerald A. Michaud
Title: Managing Member

LIST OF EXHIBITS AND SCHEDULES

Exhibit A	Disclosure Schedule
Exhibit B	Intentionally Omitted
Exhibit C	Form of Note
Exhibit D	Intentionally Omitted
Exhibit E	Form of Officer’s Certificate

EXHIBIT A

DISCLOSURE SCHEDULE

Acuity hereby certifies the following information to Lender:

Section 1. Information For UCC Financing Statements and Searches and Deposit Accounts and Accounts Holding Securities.

(a) The exact corporate name of Acuity as it appears in its Articles of Formation, as amended to date is: Acuity Pharmaceuticals, LLC.

(b) Acuity's state of organization is: Delaware.

(c) Acuity's taxpayer identification number is 33-1054746.

(d) The following is a list of all corporate names, dba or trade names used by Acuity in the past five years: Acuity Pharmaceuticals, Inc. and e-Acquisition Company II-B, LLC

(e) The following is a list of all Subsidiaries of Acuity: None.

(f) The address of Acuity's headquarters and chief executive office is: 3701 Market Street, Philadelphia, PA 19104. The following is a list of all States where Acuity's headquarters and chief executive office has been located in the past five years: Pennsylvania.

(g) The following is a list of all States where Acuity's property and assets have been located in the past five years: Pennsylvania.

(h) The following is a list of all of Acuity's deposit accounts (bank name, address and account names and numbers): M & T Bank, 601 Dresher Road, Horsham, PA 19044, Account Name: Acuity Pharmaceuticals, Inc., Checking Account Number 8892617781.

(i) The following is a list of all of Acuity's accounts holding securities (broker/bank name, address and account names and numbers): MTB Investment Group, 255 East Avenue, Rochester, NY 14604, Account Name: Acuity Pharmaceuticals, Inc., Account Number 2001552.

eXegenics hereby certifies the following information to Lender:

Information For UCC Financing Statements and Searches and Deposit Accounts and Accounts Holding Securities.

(a) The exact corporate name of eXegenics as it appears in its Certificate of Incorporation, as amended to date is: eXegenics, Inc.

(b) eXegenics' state of incorporation is: Delaware.

(c) eXegenics' taxpayer identification number is 75-2402409

(d) The following is a list of all corporate names, dba or trade names used by eXegenics in the past five years:

(e) The following is a list of all Subsidiaries of eXegenics: Acuity and Froptix.

(f) The address of eXegenics' headquarters and chief executive office is: 1250 Pittsford-Victor Road, Pittsford, NY 14534.

(g) The following is a list of all States where Borrower's headquarters and chief executive office has been located in the past five years: New York.

(h) The following is a list of all States where eXegenics' property and assets have been located in the past five years: New York.

(i) The following is a list of all of Borrower's deposit accounts (bank name, address and account names and numbers):

(j) The following is a list of all of Borrower's accounts holding securities (broker/bank name, address and account names and numbers):

EXHIBIT B

(INTENTIONALLY OMITTED)

EXHIBIT C

AMENDED AND RESTATED SECURED PROMISSORY NOTE

$4,000,000.00

Dated as of: September ___, 2005
Executed as of: March ___, 2007

FOR VALUE RECEIVED, the undersigned, ACUITY PHARMACEUTICALS, LLC, a Delaware limited liability company and EXEGENICS, INC., a Delaware corporation (collectively, "Borrower"), HEREBY, JOINTLY AND SEVERALLY PROMISE TO PAY to the order of HORIZON TECHNOLOGY FUNDING COMPANY LLC, a Delaware limited liability company ("Lender") the principal amount of Four Million Dollars ($4,000,000.00) or such lesser amount as shall equal the outstanding principal balance of the Loan made to Borrower by Lender pursuant to the Loan Agreement (as defined below), and to pay all other amounts due with respect to the Loan on the dates and in the amounts set forth in the Loan Agreement.

Interest on the principal amount of this Note from the date of this Note shall accrue at the Loan Rate or, if applicable, the Default Rate. The Loan Rate for this Note is 12.23% per annum based on a year of twelve 30-day months. If the Funding Date is not the first day of the month, interim interest accruing from the Funding Date through the last day of that month shall be paid on the first calendar day of the next calendar month. Borrower shall make payments of accrued interest only on the outstanding principal amount of the Loan on the first day of each month ("Payment Date"), commencing November 1, 2005, through and including July 1, 2007. Commencing on August 1, 2007, and continuing on consecutive Payment Dates thereafter, Borrower shall make to Lender twelve (12) level payments of principal plus accrued interest on the then outstanding principal amount due hereunder of Three Hundred Fifty-Five Thousand Seven Hundred Twenty-Five and 68/100 Dollars ($355,825.68). If not sooner paid, all outstanding amounts hereunder and under the Loan Agreement shall become due and payable on July 1, 2008.

Principal, interest and all other amounts due with respect to the Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement. The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

This Note is referred to in, and is entitled to the benefits of, a certain Amended and Restated Venture Loan and Security Agreement dated as of the date hereof by and among Borrower and Lender (the "Loan Agreement"). The Loan Agreement, among other things, (a) provides for the making of a secured Loan to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid, except as set forth in Section 2.3 of the Loan Agreement.

This Note and the obligation of Borrower to repay the unpaid principal amount of the Loan, interest on the Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Note are hereby waived.

Borrower shall pay all reasonable fees and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower's obligations hereunder not performed when due. This Note shall be governed by, and construed and interpreted in accordance with, the laws of the State of Connecticut.

Note Register; Ownership of Note. The ownership of an interest in this Note shall be registered on a record of ownership maintained by Borrower or its agent. Borrower shall register any transfers of any interest in this Note on such register within ten (10) days of notice by the last registered holder of such transfer. Notwithstanding anything else in this Note to the contrary, the right to the principal of, and stated interest on, this Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Note on the part of any other person or entity.

This Note amends and restates in its entirety a certain Secured Promissory Note dated September 14, 2005 (the "Original Note") executed by Acuity Pharmaceuticals, LLC, successor by merger to Acuity Pharmaceuticals, Inc., in favor of the Lender. Nothing contained herein shall be deemed a repayment or novation of the Original Note.

IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:
ACUITY PHARMACEUTICALS, LLC, successor by merger to Acuity Pharmaceuticals, Inc.

By: _____
Name: _____
Title: _____

EXEGENICS, INC.

By: _____
Name: _____
Title: _____

EXHIBIT D

(INTENTIONALLY OMITTED)

EXHIBIT E

FORM OF OFFICER'S CERTIFICATE

TO: HORIZON TECHNOLOGY FUNDING COMPANY LLC

Reference is made to the Amended and Restated Venture Loan and Security Agreement dated as of March ___, 2007 and effective as of September 14, 2005 (as it may be amended from time to time, the "Loan Agreement") by and among ACUITY PHARMACEUTICALS, LLC, successor by merger to ACUITY PHARMACEUTICALS, INC., and EXEGENICS, INC. (collectively, "Borrower") and HORIZON TECHNOLOGY FUNDING COMPANY LLC ("Lender"). Unless otherwise defined herein, capitalized terms have the meanings given such terms in the Loan Agreement.

The undersigned Responsible Officer of Borrower hereby certifies to Lender that:

1. No Event of Default or Default has occurred under the Loan Agreement. (If a Default or Event of Default has occurred, specify the nature and extent thereof and the action Borrower proposes to take with respect thereto.)

2. The information provided in Section 1 of the Disclosure Schedule is currently true and accurate, except as noted below.

3. Borrower is in compliance with the provisions of Sections 4, 6 and 7 of the Loan Agreement, except as noted below.

4. Attached herewith are the [monthly financial statements pursuant to Section 6.3(a) of the Loan Agreement/annual audited financial statements pursuant to Section 6.3(b) of the Loan Agreement]. These have been prepared in accordance with GAAP and are consistent from one period to the next except as noted below.

NOTES TO ABOVE CERTIFICATIONS:

BORROWER:
ACUITY PHARMACEUTICALS, LLC, successor by merger to
Acuity Pharmaceuticals, Inc.

By: _____
Name: _____
Title: _____

EXEGENICS INC.

By: _____
Name: _____
Title: _____

EXHIBIT 10.8

TECHNOLOGY LICENSE AGREEMENT

License Agreement ("**Agreement**"), effective as of August 3, 2006 between THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, (the "**University**"), and ACUITY PHARMACEUTICALS, INC., a Delaware corporation, having its principle place of business at 3701 Market Street, Philadelphia, PA, 19104 ("**Licensee**" or "**Acuity**").

Preliminary Statement

University holds certain rights to the Technology described below and desires to have the Technology commercialized. Licensee wishes to obtain the right to use the Technology for commercial purposes. Therefore, in consideration of the mutual obligations set forth below and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, University and Licensee agree as follows.

ARTICLE I
DEFINITIONS

The following capitalized terms are used in this Agreement with the following meanings:

1.1. "**Effective Date**" means August 3, 2006.

1.2. **"FDA"** means the United States Food and Drug Administration, or any successor thereto.

1.3. "**IND**" means an "investigational new drug application" as defined by the United States Food, Drug, and Cosmetic Act, as amended (the "Act"), and applicable FDA rules and regulations or a foreign equivalent.

1.4. **"Inventions**" means all devices, machines, methods, processes, manufactures, compositions of matter and uses, and Technical Information, contained in the disclosure entitled "CW081 Silencing of TGF ß Receptor Expression by SiRNA."

1.5. "**Licensed Field**" means the inhibition of and treatment of ophthalmic disease.

1.6. "**Licensed Patents**" means (a) the patents and patent applications listed on Schedule 1 and any continuations, divisionals, reissues, renewals, re-examinations, foreign counterparts, or substitutions of or to the above.

1.7. "**Licensed Product**" means any product or process or license for information, in the Field of Use, that is distributed by Licensee that is covered by any of the University's rights in the Technology.

1.8. **"NDA"** means a "new drug application," as defined in the Act and applicable FDA rules and regulations, including an application of the type described in section 505(b)(2) of the Act.

1.9. "**Net Sales**" means the total gross proceeds to Licensee on sales and any other distributions of Licensed Products to third parties, less deductions for the following to the extent actually paid with respect to such sales or distributions:

(a) Customary rebates;

(b) Commissions allowed to distributors or direct sales force;

(c) Amounts repaid or credited to customers on account of rejections or returns of specified products for which a royalty was paid under this Agreement; and

(d) Freight and other transportation costs, including insurance charges, and duties, tariffs, sales and excise taxes and other governmental charges based directly on sales, turnover or delivery of the specified products;

1.10. "**Net Sublicense Payments**" means (a) cash payments made to Licensee in consideration of the sublicense; and (b) the fair market value of any non-cash consideration received by Licensee from a Sublicense in consideration of a Sublicense; provided, however that the following shall not be included in the calculation of Net Sublicense Payments (i) reasonable amounts received in exchange for equity investments in Licensee where no Sublicense is granted in consideration for such amounts received in exchange for equity investments; (ii) sponsored research funding paid to Licensee by a sublicensee in a bona fide transaction for future research to be performed by Licensee, where no Sublicense is granted in consideration for such amounts received in exchange for future research to be performed by Licensee; (iii) payments for consulting services actually performed by Licensee in a bona fide transaction at arms length rates where the consulting services do not utilize the Technology; and (iv) intellectual property rights received by Licensee from a Sublicensee, including, but not limited to, licenses or sublicenses to intellectual property rights, covenants not to compete against Licensee, or agreements not to assert claims against Licensee where no sublicense to Technology is granted in exchange for such rights.

1.11. "**Royalty**" or "**Royalties**" means all amounts payable under Section 3 of this Agreement.

1.12. "**Sublicense**" means any grant by Licensee of any rights to a Sublicensee in accordance with Article II of this Agreement.

1.13. "**Sublicensee**" means any person or entity to which a Sublicense is granted in accordance with Article II of this Agreement.

1.14. "**Technical Information**" means the non-patented technical information and know-how belonging to University that is (a) relating to the Inventions or Licensed Patents or Licensed Products, (b) communicated, transferred or otherwise conveyed to Licensee by any of the University or any employee or agent of the University, and (c) which, at the time it is communicated to Licensee, is not in the public domain in the same form as communicated to Licensee.

1.15. **Technology**" means the Inventions, Licensed Patents and Technical Information, collectively.

1.16. "**Territory**" means all countries where patent rights are enforceable with respect to patents, and worldwide for Technical Information.

ARTICLE II
GRANT OF LICENSE

2.1. **Grant**. Subject to Licensee's compliance with the terms and conditions of this Agreement, University hereby grants to Licensee the exclusive right and license, including the right to sublicense, to use the Technology, and to the extent not prohibited by law, to make, have made, use, import, sell or otherwise commercialize Licensed Products within the Licensed Field and within the Territory, which shall be worldwide for pending patent applications and Technical Information, and which shall be any country in which claims of a Licensed Patent are issued and enforceable.

2.2. **Reservations**.

(a) University reserves for itself all rights not granted herein and the irrevocable right to identify, make, have made, use and have used only for any research or educational purpose, the Technology within the Licensed Field and within the Territory.

(b) Inventions may have been conceived with the use of United States government funds under a grant from an agency or department of the United States Government. Therefore, there is reserved from the rights granted hereunder the rights, if any, of the United States government to practice the Inventions for its own purposes in such manner to which it is entitled. University further reserves for itself the right to grant to the United States Government a royalty-free license or licenses, with the right to sublicense, to the Technology to the extent that such grant of license(s) is or may be required by funding agreements between the University and the United States Government relating to the Technology.

(c) Rights to any Technology not expressly granted to Licensee hereunder or reserved to third parties are hereby expressly reserved to the University, and such Technology are licensed under this Agreement only to the extent owned by, or assigned to, the University. No title in or to the Technology is transferred to Licensee pursuant to this Agreement. The University does not and shall not have any obligation to pay Licensee a royalty or any other fee for any of the rights reserved to the University in this Section 2.2.

2.3. **Sublicenses**. In the event that Licensee sublicenses any of its rights to any Sublicensee, such Sublicense shall contain license, audit and confidentiality terms no less restrictive than those set forth herein and no terms shall create a conflict with this Agreement, and if requested, Licensee shall provide a complete copy of all Sublicenses entered into by Licensee within five (5) business days of University's request. Licensee further agrees to provide University with a copy of each report received by Licensee from a Sublicensee pertinent to any royalties or other sums owing to Licensee. University shall be a third party beneficiary in all Sublicenses, and shall be named as such in writing in all Sublicenses.

2.4. **No Obligation to Update Technology**. Except as expressly stated in this Agreement, none of University or any faculty, staff, employee or student of the University shall have any

obligation to provide Licensee or any Sublicensee with any updates of or additional Technical Information owned, controlled or in the possession of any of them.

ARTICLE III
PAYMENTS

3.1. **Royalties and Reimbursements**. For the licenses granted in Section 2.1 of this Agreement, Licensee shall:

(a) within three (3) business days of the execution of this Agreement, pay University a non-refundable licensing fee in the amount of $25,000;

(b) within thirty (30) days of the first and second anniversary of the Effective Date, pay University a non-refundable licensing fee in the amount of $25,000;

(c) within thirty (30) days of the third anniversary of the Effective Date, pay University a non-refundable licensing fee in the amount of $50,000;

(d) within thirty (30) days of the fourth anniversary of the Effective Date, pay University a non-refundable licensing fee in the amount of $50,000;

(e) within thirty (30) days of the fifth anniversary of the Effective Date and each subsequent anniversary thereafter until the Licensee receives NDA approval on its first Licensed Product, pay University an annual non-refundable licensing fee in the amount of $100,000;

(f) pay University a Royalty equal to three percent (3%) of Net Sales of Licensed Products sold, leased, rented, licensed or otherwise distributed by Licensee during the term of this Agreement, if any. If no valid claim of any issued patent among the Licensed Patents covers the Licensed Products in a country of the Territory, then the royalties shall be reduced to one and one-half percent (1.5%) of Net Sales of Licensed Products sold, leased, rented, licensed or otherwise distributed by Licensee in such country of the Territory.

3.2. **Milestones and Milestone Payments**. Licensee agrees to make the milestone payments to University as set forth below (the "**Milestone Payments**") within forty-five (45) days after the occurrence of each event set forth on such Schedule.

Milestone	Payment
First Phase I Clinical Trial initiated	$ 100,000
First Phase III Clinical Trial initiated	$ 350,000
First NDA Approval in the U.S	$ 500,000
First NDA Equivalent Approval outside of US	$ 500,000
Upon first $25,000,000 of commercial sales of any Licensed Products	$1,000,000

Each of the foregoing payments shall be made only once. Thereafter, no additional Milestone Payments shall be due or payable by Licensee for License Products.

3.3. **Calculations and Payment of Royalties.**

(a) Royalties shall be paid in quarterly increments (the "Royalty Period"). Royalties shall be calculated for each Royalty Period as of the last day of each such Royalty Period. Payment of Royalties with respect to each Royalty Period shall be due within sixty (60) days after the end of Royalty Period, beginning with the earlier of (i) the Royalty Period in which the first sale of a Licensed Product occurs, or (ii) the Royalty Period for which Annual Minimum Royalties are due.

(b) Within sixty (60) days of the end of each Royalty Period (whether or not Royalties are due), Licensee shall deliver to University a true and complete accounting of sales or distributions of any Licensed Product and revenues from those sales by Licensee and its Sublicensees for each country of sales origin during such Royalty Period and deductions taken, with a separate accounting for each Licensed Product of sales and receipts by country, and a detailed calculation of the Royalty payment due University for such Royalty Period, in each case in form and substance as set forth on Exhibit A attached to this Agreement. If no sales of Licensed Products were made or other payments due in such Royalty Period, then Licensee's statement shall so state.

(c) Each Annual Minimum Royalty payment shall be accompanied by a calculation of the Annual Minimum Royalty such that University can verify the amount of the payment.

3.4. **Royalty stacking and combination products**: The royalty rate will not diminish for combination products or stacking royalties.

3.5. **Annual Minimum Payments**. Beginning one year after the Licensee or any Sublicensee receives NDA approval on its first Licensed Product, it the total payments actually paid to University payments (including any payments required pursuant to this Article III) for any annual period are less than $400,000, Licensee shall pay University an amount (the "**Annual Minimum Royalty**") for that annual period equal to the difference between the payments actually paid for such annual period and the Annual Minimum Royalty owing for that annual period. Such payment shall be made within forty five days of the end of each year of this Agreement beginning one year after the Licensee receives NDA approval on its first Licensed Product. If this Agreement is terminated by Licensee for any reason during any year, a pro-rata Annual Minimum Royalty shall be paid.

3.6. **Sublicense Fees.** During the Term, Licensee will pay to University a sublicense fee equal to twelve (12%) of the Net Sublicense Payments received by Licensee from Sublicensees who sell Licensed Products pursuant to a Sublicense.

3.7. **Records**. Licensee shall keep, and shall cause Sublicensees to keep, accurate records in sufficient and customary detail such that the amounts payable may be verified. During the term of this Agreement and for a period of seven (7) years following termination, upon the written request of University, but not more than once in any calendar year, Licensee shall provide a copy of its books and records regarding the sale of Licensed Products, to a representative of University that is trained in auditing to audit such books and records. If Licensee disputes the findings of such representative and the parties are unable to resolve the matter in 30 days, then, at Licensee's expense, University shall select an auditor from an independent certified public accounting firm from Ernst and Young, KPMG, PWC or

Deloitte & Touche to perform an audit, and the results shall be binding upon the University provided Licensee provides the auditors all reasonably requested information. Such records shall include but not be limited to invoice registers and original invoices; product sales analysis reports; price lists, accounting general ledgers; sublicense and distributor agreements; price lists, product catalogues and marketing materials; financial statements and income tax returns; sales tax returns; inventory and production records and shipping documents. No separate confidentiality agreement will be required to conduct such an examination or audit, and the results of the audit shall be treated as Confidential Information unless and until a related legal action is taken. Additionally, it is understood that the University or its representative will be allowed to keep a copy of all documents provided by the Licensee hereunder and all documents created by the University or its representative in connection with such examination or audit for archival purposes.

3.8. **Payments**. All amounts owing to University under this Agreement shall be paid in U.S. dollars, by check or other instrument representing immediately available funds payable to "The University of Illinois," or in a wire transfer sent to an account listed below or such other account as may be designated by University from time to time.

JPMorgan Chase Bank, NA
New York NY
ABA/Routing No. 021000021
Account Title: University of Illinois Operations
Account Number: 11-12201
Reference: OTM/CW081/Acuity
Swift code: CHASUS33 if from foreign country

Please email cashmgmt@uillinois.edu with anticipated wire amount, where it is coming from, etc.

If Licensee or any Sublicensee receives payment in a currency other than U.S. dollars, such currency will be converted directly from the currency in the country of sales origin to U.S. dollars on the date initial payment was made, without intermediate conversions, and payments will be made based on such conversion. The conversion rate shall be the applicable rate of exchange of Citibank, N.A., in New York, New York, on the last day of each month during which revenues are received by Licensee during the Royalty Period**.**

3.9. **Overdue Payments**. Overdue Payments shall bear simple interest until paid at the lower of the annual rate of 18% or the highest rate permitted by law. Interest accruing under this Section shall be due University on demand

3.10. **Termination Report and Payment**. Within sixty (60) days after the date of termination of this Agreement, Licensee shall make a final report and payment to University as set forth in this Agreement for the then-current Royalty Period.

3.11. **Commercialization; Progress Report**.

(a) Licensee shall use its commercially reasonable efforts to bring Licensed Products to market within the Licensed Field in the United States and other large markets in the Territory, and to develop such markets through a thorough and vigorous program for

the commercial exploitation of the Licensed Products and Technology. In the event that (i) neither Licensee nor any of its Sublicensees files an IND, or its equivalent, with the FDA, or a similar agency in another jurisdiction, for a Licensed Product before or on the 4th anniversary of the Effective Date; or (ii) neither Licensee nor any of its Sublicensees files an NDA, or its equivalent, with the FDA, or a similar agency for the a Licensed Product within ten (10) years after filing the related IND, University shall have the right to terminate the Agreement upon 90 days notice to Licensee and Licensee's failure cure within such 90 day period.

(b) Licensee shall further provide to the University:

(i) a copy of all business plans distributed to prospective investors and all financial information distributed to any shareholder regardless of class of shares;

(ii) promptly as made available by Licensee to any third party, any updates of the above; and

(iii) on or before the anniversary date of each year during the term of this Agreement, a written report summarizing performance against the goals set forth in the Milestones.

3.12. **Patent Costs**.

(a) Licensee agrees to pay $3,746.90 to University to reimburse University for unreimbursed patent costs incurred for the Technology for all filings in New Zealand, Australia, Mexico, Israel and Singapore, and any other countries that are requested by Licensee, within five (5) days of the Effective Date, and to reimburse all patent costs therefore for such countries on an ongoing basis ("Patent Costs"). In addition, for US, Canada, EPO, India and China, Licensee will reimburse University for all patent costs specifically related to the Licensed Field which result from requests or suggestions made by Acuity.

3.13. **No Refunds or Credits**. Other than for overpayment of royalties as determined pursuant to Section 3.7 hereof, all amounts paid to the University pursuant to this Agreement shall be non-refundable.

ARTICLE IV
WARRANTIES; INDEMNIFICATION

4.1. **Limited Representation**. University represents that it has the right, power and authority to enter into and perform its obligations under this Agreement.

4.2. **Disclaimer of Warranties**. THE TECHNOLOGY IS LICENSED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND. EXCEPT AS SET FORTH IN SECTION 4.1 ABOVE, UNIVERSITY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING IN ANY WAY TO THE RIGHTS LICENSED HEREUNDER, THE TECHNOLOGY OR THE LICENSED PRODUCTS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR

PURPOSE AND THE STATUTORY WARRANTY OF INFRINGEMENT. LICENSEE AND ITS SUBLICENSEES ASSUME THE ENTIRE RISK AND RESPONSIBILITY FOR THE SAFETY, EFFICACY, PERFORMANCE, DESIGN, MARKETABILITY, TITLE AND QUALITY OF ALL TECHNOLOGY AND LICENSED PRODUCTS. Nothing contained in this Agreement shall be construed as either a warranty or representation by University as to the validity or scope of any Licensed Patents.

4.3. **Limitation of Liability**. University assumes no liability in respect of any infringement of any patent or other right of third parties due to the activities of Licensee or any Sublicensee under this Agreement. In no event shall University, including its trustees, directors, officers, faculty, staff, students, employees, consultants and agents (collectively, the "Agents"), be responsible or liable for any direct, indirect, special, punitive, incidental or consequential damages or lost profits to Licensee, Sublicensees or any other individual or entity regardless of legal theory. The above limitations on liability apply even though University, or any of its Agents, may have been advised of the possibility of such damage. Licensee shall not, and shall require that its Sublicensees do not, make any statements, representations or warranties or accept any liabilities or responsibilities whatsoever with regard to the University or its Agents that are inconsistent with any disclaimer or limitation included in this Article 4.

4.4. **Indemnification**. None of the University or its Agents (each an "**Indemnified Person**") shall have any liability to Licensee, any Sublicensee or any other person or entity for or on account of (and Licensee agrees and covenants, and agrees to cause each of its Sublicensees to agree and covenant not to sue any Indemnified Person in connection with) any injury, loss, or damage of any kind incurred by Licensee or Sublicensees or any other person or entity, whether direct, indirect, special, punitive, incidental, consequential or otherwise arising under any legal theory (and further excluding without limitation any existing or anticipated profits or opportunities for profits lost by Licensee or any Sublicensee), arising out of or in connection with or resulting from (i) this Agreement, the Technology and Licensed Products and any activities undertaken hereunder; (ii) the production, use or sale of the Licensed Products by Licensee or its Sublicensees, or (iii) any advertising or other promotional activities with respect to either of the foregoing. Licensee shall indemnify and hold each Indemnified Person harmless against all claims, demands, losses, damages or penalties (including but not limited to reasonable attorney's fees and expenses at the pretrial, trial or appellate level) made against any Indemnified Person with respect to items (i) through (iii) above, whether or not such claims are groundless or without merit or basis.

4.5. **Insurance**. Licensee shall obtain and carry in full force and effect, and shall cause its Sublicensees to obtain and carry in full force and effect, insurance with the coverages and limits, the nature and extent of which shall be commensurate with customary practices among similarly situated companies in Licensee's industry; but in no event shall the general liability insurance be less than (i) $1,000,000 per occurrence, with an aggregate minimum of $2,000,000 for personal injury or death, and (ii) $1,000,000 per occurrence, with an aggregate minimum of $2,000,000 for property damage. Prior to the sale of any Licensed Product to any third party, Licensee shall secure product liability insurance in an amount consistent with industry practice, but in any event not less than $1,000,000 per occurrence and $5,000,000 in aggregate. Such insurance will be written by an insurance company authorized to do business in the Commonwealth of Pennsylvania, will name the University

as an additional named insured under such insurance policy or policies and shall require thirty (30) days written notice to be given to University prior to any cancellation, endorsement or other change. Within five days of execution of this Agreement, Licensee will provide University, for itself and on behalf of any Sublicensee, with appropriate certificates of insurance reflecting the obligations of Licensee pursuant to this subsection.

4.6. **Survival**. Licensee's obligations under this Article 4 shall survive the expiration or earlier termination of all or any part of this Agreement.

ARTICLE V
PROSECUTION AND MAINTENANCE; CONFIDENTIALITY

5.1. **Prosecution and Maintenance**. University shall be responsible for prosecuting and maintaining the Licensed Patents. As set forth in Section 3.12 above, Licensee shall pay promptly when due all Patent Costs, and the University reserves the right to abandon any or all Licensed Patents and to terminate this Agreement if such payments are not timely. So long as Licensee is not in material breach of this Agreement, University shall instruct patent counsel to provide Licensee with copies of all material communications transmitted to University or submitted by University from or to the United States Patent and Trademark Office (and corresponding foreign authorities) with respect to the Licensed Patents.

5.2. **Additional Applications.**

(a) If Licensee wishes the University to file a patent application with respect to any of the Technology in any jurisdiction in which an application has not already been filed, Licensee shall identify the jurisdiction and the applicable Licensed Patent in writing to University at least 60 days prior to any bar date, and University shall have sixty (60) days after it receives such written notice in which to file such a patent application at Licensee's expense, which the University may require be prepaid.

(b) If University determines to abandon a patent application in any territory previously filed with respect to any of the Inventions, it will give Licensee advance notice of such determination as is reasonably practicable. Licensee may, by written notice to University, elect at its sole cost and in the name of University, to prepare, file, prosecute and maintain such patent applications and patents in countries of its choice throughout the world. In such case, University shall assign (or grant Licensee a perpetual royalty free license, if an assignment can not be made) to Licensee all of its rights under such patent or patent application in any country in which University wished to abandon its patent rights and Licensee chose to continue prosecution and/or maintenance of such patent rights.

5.3. **Interferences**. University will give Licensee written notice promptly upon the declaration of any interference involving any of the Licensed Patents. If Licensee then gives University written notice within thirty (30) days that Licensee does not wish to pay for the costs of the interference, then (a) University and Licensee will negotiate in good faith to establish a mutually acceptable basis on which Licensee may continue its licenses under this Agreement with respect to such Licensed Patents without such payments, or (b) Licensee may elect to terminate this Agreement pursuant to Sections 7.2 below. Licensee shall not be

obligated to pay or reimburse any costs of the interference during the period of negotiation. However, if University and Licensee have not negotiated a mutually acceptable amendment to this Agreement within thirty (30) days after Licensee notifies University of its intent not to pay for the subject interference, Licensee will thereafter be obligated to pay or reimburse all costs previously and thereafter incurred in connection with the interference unless Licensee gives notice of termination pursuant to Section 7.2 below. Licensee agrees that it will not, and will not permit any Sublicensee to, directly or indirectly initiate, support, or without the express written consent of the University participate in, any interference involving any of the Licensed Patents.

5.4. **Confidentiality**.

(a) Licensee shall treat as confidential all proprietary information with respect to the Technology (including but not limited to protecting such proprietary information from disclosure to third parties without authorization) and shall cause the same of all Sublicenses. University shall treat as Confidential all financial information and product plans of Licensee that are marked as confidential. Each party and its Sublicensees shall take such reasonable actions as are necessary to safeguard the confidentiality of any confidential information with respect to which the recipient has an obligation to keep confidential pursuant to this Section 5.4. With respect to disclosure to third parties, the receiving party shall first obtain from the third party a written confidentiality agreement which protects the information disclosed at least to the same extent as recipient uses to protect its own most valuable trade secrets, and which contains a prohibition of disclosure to additional third parties.

(b) The provisions of Section 5.4(a) shall not apply to information which (i) was previously known to the recipient at the time of disclosure, (ii) is in the public domain at the time of disclosure, (iii) becomes a part of the public domain after the time of disclosure, other than through disclosure by Licensee or Sublicensee or a third party who is under an agreement of confidentiality with respect to the subject information, (iv) is independently developed without utilization of the proprietary information, or (v) is required to be disclosed by law or court order and is not covered by a protective order. For information disclosed under this paragraph b(v), such information will continue to be treated as set forth above but for disclosure required by law or court order.

(c) This Section 5.4 shall survive the expiration or termination of this Agreement.

ARTICLE VI
INFRINGEMENT

6.1. **Notification**. If either party becomes aware of the infringement of any patent under the Licensed Patents within the Licensed Field, it shall immediately notify the other in writing of all details available. University and Licensee shall then use good faith efforts to determine within sixty (60) days of the notice referred to above, whether and in what manner to proceed against such infringer, and a mutually acceptable allocation of any costs and recoveries resulting from such action. If the parties are unable to so agree, the

University shall have the first right to determine how to proceed against such infringer in accordance with this Article 6.

6.2. **University Right to Prosecute**. Subject to Section 6.1 above, if a third party infringes or allegedly infringes any Licensed Patents within the Licensed Field which University wishes to prosecute, University may, at University's discretion, proceed against the infringer in the name of University and/or Licensee, and will notify Licensee of its determination in this regard within forty-five (45) days of the end of the negotiation period set forth in Section 6.1 above. Licensee will cooperate in all reasonable respects with University and execute any documents and instruments necessary or appropriate for University to exercise its rights under this Section 6.2. Any actions by University pursuant to this clause shall be at University's own expense and Licensee shall inform University of all material developments in such proceedings, and shall provide University with all correspondence and pleadings related to any such action. Recoveries collected by University shall be paid (i) first, to University in the amount of all reasonable out-of-pocket costs and expenses incurred by University in such action, (ii) then to Licensee to reimburse Licensee for its documented and reasonable out-of-pocket costs and expenses incurred in cooperating with University in such action as requested by University, and (iii) the remainder, if any, shall be paid in proportion to each party's legal expenses incurred in such enforcement action.

6.3. **Licensee Right to Prosecute**. Subject to Sections 6.1 and 6.2 above, if a third party infringes or allegedly infringes any patent under the Licensed Patents within the Licensed Field, if Licensee has standing, Licensee may prosecute, or if no standing. Licensee may request the University to prosecute, the infringer by appropriate legal proceedings, provided that Licensee shall employ counsel reasonably satisfactory to University, shall inform University of all material developments in such proceedings, and shall provide University with all correspondence and pleadings related to any such action. Licensee shall be responsible for all costs and expenses of any enforcement activities, including legal proceedings, against infringers that Licensee initiates. University agrees to cooperate in all reasonable respects with any enforcement proceedings at the request of Licensee, and at Licensee's expense. University may be represented by University's counsel in any such legal proceedings, at University's own expense (subject to reimbursement under this Section 6.3), acting in an advisory but not controlling capacity. The prosecution, settlement, or abandonment of any proceeding under this Section shall be at Licensee's reasonable discretion, provided that Licensee shall not have any right to surrender any of University's rights to the Technology or to grant any infringer any rights to the Technology other than a Sublicense subject to the conditions which would apply to the grant of any other Sublicense. Recoveries collected by Licensee shall be paid first, to Licensee in the amount of all documented and reasonable out-of-pocket costs and expenses incurred by Licensee in such action, (ii) then to University to reimburse University for its documented and reasonable out-of-pocket costs and expenses incurred in cooperating with Licensee in such action as requested by Licensee, and (iii) the remainder, if any, shall be paid in proportion to each party's legal expenses incurred in such enforcement action. Holders of exclusive licenses shall have the right to grant nonexclusive Sublicenses consistent with the rights granted herein in settlement of such enforcement action provided such Sublicenses do not conflict with any license granted by University to a third party.

ARTICLE VII
TERMINATION

7.1. **University Right to Terminate**. University shall have the right (without prejudice to any of its other rights conferred on it by this Agreement or otherwise) to terminate this Agreement if Licensee:

(a) is in default in payment of any amount or other consideration or reimbursement required under this Agreement, or the making of any reports required to be made by Licensee pursuant to this Agreement, and Licensee fails to remedy any such default within forty-five (45) days after written notice thereof by University;

(b) materially breaches any part of Section 2 or Section 5.4 and Licensee fails to remedy any such breach within twenty (20) days after written notice thereof by University;

(c) is in breach of or defaults with respect to any provision of this Agreement other than (a) above (including but not limited to milestones) and Licensee fails to remedy any such breach or default within seventy-five (75) days after written notice thereof by University;

(d) files any action to challenge any of University's rights in the Technology, and such termination shall be immediate upon the filing of such action;

(e) intentionally makes any materially false report and such termination shall be immediate upon notice;

(f) commences a voluntary case as a debtor under the Bankruptcy Code of the United States or any successor statute (the "**Bankruptcy Code**"), or if an involuntary case is commenced against Licensee under the Bankruptcy Code and the petition in such case is not dismissed within sixty (60) days of the commencement of the case, or if an order for relief shall be entered in such case, or if the same or any similar circumstance shall occur under the laws of any foreign jurisdiction; or

(g) fails to achieve a milestones set forth in Section 3.11(a) within ninety (90) days after written notice thereof by University.

(h) fails to receive revenues for the sale or license or other distribution of Licensed Products in each country in the Territory during any twelve (12) month period after first commercial sale of a Licensed Product in such country. Such termination under this Section 7.1(h) shall be on a country-by-country basis; provided, however, that the University shall not have the right to terminate this Agreement under this Section 7.1(h) if after the twelve-month period set forth above, Acuity shall be using its commercially reasonable efforts to bring new Licensed Products to market within the Licensed Field in the United States and other large markets in the Territory pursuant to an IND that has been filed prior to the end of the twelve-month period referenced above.

At the election of University exercised in its sole discretion by written notice to Licensee, and in lieu of terminating this Agreement, University may either (i) declare the license rights granted under

this Agreement to Licensee to be non-exclusive, and grant to such third parties any and all additional non-exclusive rights to the Technology as the University shall determine in its sole discretion, or (ii) otherwise continue the rights of Licensee under this Agreement on such other terms and conditions as University shall determine in its sole discretion.

7.2. **Licensee Right to Terminate**. Licensee may terminate this Agreement at any time by written notice to University at least ninety (90) days prior to the termination date specified in the notice.

7.3. **Termination of Patent Rights Only**. This Agreement shall terminate with respect to Licensed Patents automatically on a country-by-country basis upon the expiration or invalidity of the last-to-expire of all patent rights in the Licensed Patents in each such country. The remainder of the rights granted hereunder shall terminate in twenty (20) years.

7.4. **Effect of Termination.**

(a) If this Agreement terminates for any reason, on the effective date of termination Licensee shall immediately cease and to the extent required hereunder its Sublicensees, to immediately cease using the Technology and, making, having made and selling the Licensed Products, and shall return to University, or deliver or destroy as University directs, all copies of the Technology then in its possession.

(b) Notwithstanding the termination or expiration of this Agreement for any reason, the following provisions shall survive:

(i) Licensee's obligation to pay fees and royalties and costs hereunder that are accrued and remaining unpaid or unperformed under the terms of this Agreement prior to such termination (including without limitation the delivery and continuing benefits, if any, of any Equity Rights);

(ii) Sections 3.7, 8.2 – 8.5 and 8.9 – 8.14;

(iii) any cause of action or claim of Licensee or University, accrued or to accrue, because of any breach or default of this Agreement by the other party.

ARTICLE VIII
MISCELLANEOUS

8.1. **Assignment.** Except in the event of a consolidation, reorganization, merger or sale of substantially all stock or assets (meaning at least 80% by value) to an assignee, this Agreement shall not be assigned by Licensee without the prior written consent of University granted or withheld in the discretion of the University. Prior to any such assignment becoming effective with a third party that is not publicly traded (i) Licensee must deliver written notice of the transaction and a copy of the applicable purchase agreement not less than three (3) days before the effective date; and (ii) the successor entity or Licensee delivers to University a written assignment and assumption by such successor entity of all of the terms and conditions of this Agreement, such agreement to be in form and substance satisfactory to the University.

8.2. **Entire Agreement, Amendment and Waiver**. This Agreement (including any attached schedules) contains the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior written or oral discussions, arrangements, courses of conduct or agreements. This Agreement may be amended only by an instrument in writing duly executed by the parties. The waiver of an obligation hereunder shall not constitute a waiver of any other obligation, and shall not constitute a permanent waiver of that obligation.

8.3. **Notices**. All notices required or desired to be given under this Agreement, and all payments to be made to University under this Agreement, shall be delivered to the parties at the addresses set forth below. Notices may be given (i) by hand or (ii) by a nationally recognized overnight delivery service. The date of delivery shall be the date as verified by signed receipt.

If to University
Office of Technology Management
Attention: Director
w/ copy to University Counsel
University of Illinois at Chicago
1737 W. Polk St., Suite 312
Chicago, IL 60612
Fax: 312 996-1995

If to Licensee
Acuity Pharmaceuticals, Inc.
3701 Market Street,
Philadelphia, PA, 19104
Fax: 215-966-6186

8.4. **Severability**. If any one or more of the provisions of this Agreement should for any reason be held by any court of competent jurisdiction to be invalid, illegal or unenforceable, such provision or provisions shall be reformed to approximate as nearly as possible the intent of the parties, and the validity of the remaining provisions shall not be affected.

8.5. **Governing Law; Jurisdiction**. This Agreement is governed and interpreted under the laws of Illinois applicable to contracts made and to be performed entirely within Illinois by Illinois residents. All actions or proceedings related to this Agreement shall be litigated in courts located within the city of Chicago, Illinois, USA.

8.6. **Marking**. Licensee shall place in a conspicuous location on any Licensed Product (or its packaging where appropriate) made or sold under this Agreement a patent notice in accordance with applicable laws.

8.7. **United States Manufacture**. To the extent required by United States statute, rule or regulation or by the terms of any grant or other funding agreement applicable to the University with respect to the Inventions, (a) Licensed Products for sale in the United States of America will be manufactured or produced substantially in the United States of America, and (b) it will not grant any exclusive sublicenses under this Agreement unless the Sublicensee agrees that any Licensed Products for sale in the United States of America will be manufactured or produced substantially in the United States of America.

8.8. **Export Controls**. To the extent that the United States Export Control Regulations are applicable, Licensee shall not, without having first fully complied with such regulations, (i) knowingly transfer, directly or indirectly, any unpublished technical data obtained or to be

obtained from University, or (ii) knowingly ship, directly or indirectly, any product produced using such unpublished technical data.

8.9. **Implementation**. Each party shall, at the request of the other party, execute any document reasonably necessary to implement the provisions of this Agreement.

8.10. **Counterparts**. This Agreement may be executed in multiple counterparts, each of which when taken together shall constitute one and the same instrument.

8.11. **Remedies.** Due to the proprietary nature of the subject matter of this Agreement, the parties agree that their respective rights and obligations under this Agreement may be enforced by injunction, specific performance, or other equitable relief, without prejudice to any other rights and remedies the parties may have.

8.12. **Relationship of Parties.** The parties to this Agreement are independent contractors. There is no relationship of principal to agent, master to servant, employer to employee, or franchiser to franchisee between the parties. Neither party has the authority to bind the other or incur any obligation on its behalf.

8.13. **Headings.** The headings of the sections, subsections, and paragraphs of this Agreement have been added for convenience only and shall not be deemed to be a part of this Agreement, nor shall they affect the interpretation or construction of this Agreement in any manner.

8.14. **Agreement Conflicts.** In the event of a conflict between this Agreement and any Schedule attached hereto, the terms of the Schedule shall control.

8.15. **Advertising**. Licensee shall not use (and shall prohibit its Sublicensees from using) the names of University or any of its Agents in any commercial activity, marketing, advertising or sales brochures without the prior written consent of University, which may be granted or withheld in University's sole discretion. Notwithstanding the foregoing, Licensee may use the name of University in a non-misleading fashion in (i) executive summaries, business plans, offering memoranda and other similar documents used by Licensee for the purpose of raising financing for the operations of Licensee as related to the Licensed Products; (ii) as required in Sublicenses to vest University's interests as a third party beneficiary, and (iii) as required in any securities reports required to be filed with the Securities and Exchange Commission.

8.16. **Compliance with University Conflict Policies**. Licensee acknowledges and agrees that it will use reasonable efforts to avoid potential conflicts of interest between the University and University employees who may also be employees, consultants, shareholders or directors of Licensee. Licensee agrees to cooperate with University with respect to the University of Illinois Policy on Conflicts of Commitment and Interest, which is available at http://www.research.uiuc.edu/coi/index.asp, and to work constructively with University to manage and mitigate any conflicts that may arise in the course of this and related agreements between it and University.

IN WITNESS WHEREOF, the parties hereto have caused this Exclusive License Agreement to be executed by their respective duly authorized officers or representatives on the date indicated below.

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS

By: /s/ Stephen K. Rugg
Stephen K. Rugg
Comptroller

By: /s/ Michele M. Thompson
Michele M. Thompson, Secretary

ACUITY PHARMACEUTICALS, INC.

By: /s/ Dale R. Pfost
Dale R. Pfost
President and Chief Executive Officer

EXHIBIT 10.9

LICENSE AGREEMENT

License (this "Agreement") made as of April 13, 2006, by and between **Acuity Pharmaceuticals, Inc.,** a Delaware corporation, with its principal offices at 3701 Market Street, Philadelphia, PA, 19104 ("**Acuity**") and **Pathogenics, Inc**., a Delaware Corporation with its principal offices at 99 Derby Street, Suite 200, Hingham, MA 02043 ("**Pathogenics**")**.** (Acuity and Pathogenics are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**").

BACKGROUND

WHEREAS, Acuity is engaged in the research, development and commercialization of ophthalmic pharmaceutical products;

WHEREAS, Pathogenics is a biopharmaceutical company engaged in the acquisition, development and commercialization of novel therapeutics that have potential significant commercial viability and that target certain unmet market needs;

WHEREAS, Pathogenics has exclusively licensed rights to N-Chlorotaurine, a chemical substance produced within the body by white blood cells during an inflammatory reaction ("**N-Chlorotaurine**"), initially developed by researchers at the University Hospital of Innsbruck and the Institute of Hygiene and Social Medicine, Leopold-Franzens-University of Innsbruck, Austria (the "**Institute**");

WHEREAS, Acuity and Pathogenics believe that N-Chlorotaurine could be developed into an efficacious treatment for conjunctivitis and other related ocular conditions;

WHEREAS, researchers at the Institute are preparing to conduct clinical trials in Austria (the "Austrian Clinical Trials") to determine if N-Chlorotaurine can be used as an efficacious treatment for conjunctivitis and other related ocular conditions;

WHEREAS, Acuity desires to obtain from Pathogenics, and Pathogenics desires to grant to Acuity, an exclusive worldwide license to all of Pathogenics' rights in and to N-Chlorotaurine for the development and commercialization of ophthalmic pharmaceutical products for use in humans in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements, representations and warranties hereinafter set forth, and intending to be legally bound, the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS

"Affiliate" means any entity that directly or indirectly Owns, is Owned by, or is under common Ownership with a Party to this Agreement. "Owns" or "Ownership" means direct or indirect possession of more than fifty percent (50%) of the votes of holders of a corporation's voting securities or a comparable equity interest in any other type of entity.

"Agency" means the FDA or any governmental regulatory authority responsible for granting approvals for the sale of Licensed Products in the United States or any foreign country.

"Agreement" means this Agreement, together with all exhibits and attachments.

"Clinical Trials" means all trials and studies of the application of Licensed Products in humans or clinical studies performed by Acuity for any purpose including without limitation for purposes of obtaining regulatory approval in the United States or any foreign country and marketing Licensed Products in the United States or any foreign country.

"Commercially Reasonable Efforts" means, with respect to the efforts to be expended by a Party with respect to any objective, diligent, good faith efforts to accomplish such objective as such Party would normally use to accomplish a similar objective under similar circumstances, it being understood and agreed that with respect to the development and commercialization of Licensed Products, such efforts shall be substantially equivalent to those efforts and resources commonly used by a bio-pharmaceutical company for a similar pharmaceutical product owned by it or to which it has rights, which product is at a similar stage in its development or product life and is of similar market potential taking into account efficacy, safety, approved labeling, the competitiveness of alternative products in the marketplace, the patent and other proprietary position of the product, the likelihood of regulatory approval given the regulatory structure involved, the profitability of the product, alternative products and other relevant factors.

"Confidential Information" has the meaning set forth in Section 6.1.

"**Effective Date**" means the day and year first indicated above.

"EMEA" means the European Medicines Evaluation Agency, or any successor thereto.

"FDA" means the United States Food and Drug Administration, or any successor thereto.

"Field of Use" means the treatment of ophthalmic diseases or infection, such as but not limited to, viral conjunctivitis, bacterial conjuctivitis and herpetic keratitis.

"Fiscal Quarter" means each period of three (3) months ending on March 31, June 30, September 30, or December 31.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States.

"IND" means an "investigational new drug application" as defined by the United States Food, Drug, and Cosmetic Act, as amended (the "Act"), and applicable FDA rules and regulations or a foreign equivalent.

"Licensed Products" means products whose manufacture, use or sale would, but for the existence of this Agreement, infringe a valid claim of the Pathogenics Patent Rights.

"MHW" means the Ministry of Health and Welfare of Japan, or any successor thereto.

"NDA" means a "new drug application," as defined in the Act and applicable FDA rules and regulations, including an application of the type described in section 505(b)(2) of the Act.

"Net Sales" means the total gross proceeds to Acuity on sales to Third Parties representing sales actually collected by Acuity and its Affiliates, less deductions for the following to the extent actually paid or allowed with respect to the such sales:

(a) sales and excise taxes and duties (including import duties) paid or allowed by a selling party and any other governmental charges imposed upon the manufacture or sale, after giving effect to any rebates or refunds relating to such taxes or duties received by Acuity;

(b) rebates and chargebacks (including rebates to social and welfare systems) actually paid;

(c) allowances, chargebacks, and credits to Third Parties on account of rejected, damaged, outdated, returned, withdrawn, or recalled product or on account of retroactive price reductions affecting such product; and

(d) amounts paid to Third Parties on account of rebate payments, including Medicaid rebates.

Taxes, the legal incidence of which is on the purchaser and separately shown on Acuity's or its Affiliates' invoices, and transportation, insurance and postage charges, if prepaid by Acuity or its Affiliates and billed on Acuity's or its Affiliates' invoices as a separate item, shall not be considered a component of Net Sales. Components of Net Sales shall be determined in the ordinary course of business in accordance with Acuity's historical practice and using the accrual method of accounting in accordance with GAAP.

The supply of a product as commercial samples or for use in clinical trials or studies shall not be included within the computation of Net Sales.

Where (i) a product is sold by Acuity or an Affiliate as one of a number of items without a separate price; or (ii) the consideration for a product shall include any non-cash element; or (iii) the product is transferred by Acuity or an Affiliate in any manner other than an invoiced sale, the Net Sales price applicable to any such transaction shall be deemed to be Acuity's average Net Sales price for the applicable quantity of a product to the relevant class of customers at that time.

"Net Sublicense Payments" means (a) cash payments made to Acuity in consideration of the sublicense; and (b) the fair market value of any non-cash consideration received by Acuity from a sublicense in consideration of the sublicense other than; provided, however that the following shall not be included in the calculation of Net Sublicense Payments (i) reasonable amounts received in exchange for equity investments in Acuity by a sublicensee, (ii) sponsored research funding paid to Acuity by a sublicensee in a bona fide transaction for future research to be performed by Acuity; (iii) payments for consulting services actually performed by Acuity in a bona fide transaction at arms length rates; and (iv) intellectual property rights received by Acuity from a sublicensee, including, but not limited to, licenses or sublicenses to intellectual property rights, covenants not to compete against Acuity, or agreements not to assert claims against Acuity.

"Patents" means all valid claims in all patent applications, and all foreign patents and patent applications based thereon, including any continuations, divisionals, continuations-in-part, extensions, reissues and re-examinations of any of the foregoing and all patents issuing from any of the foregoing applications.

"Pathogenics Improvements" means any improvements to the Pathogenics Patent Rights and Pathogenics Know-how, in each case owned by Pathogenics as of the date hereof, that are conceived, created, developed, and/or otherwise invented by Pathogenics, by Acuity.

"Pathogenics Intellectual Property" means the Pathogenics Patent Rights, Pathogenics Improvements, and the Pathogenics Know-how.

"Pathogenics Know-how" means Technical Information owned, developed, or controlled by Pathogenics as of the date of this Agreement or during the Term of this Agreement.

"Pathogenics Patent Rights" means any valid claim of any Patent issued based on a patent application previously or hereafter filed by or on behalf of Pathogenics or previously or subsequently assigned, licensed, or granted to, or acquired by, Pathogenics, including without limitation Patents and patent applications based on Pathogenics Improvements. Exhibit A lists all the patents and patent applications giving rise to Pathogenics Patent Rights as of the date of this Agreement.

"Technical Information" means all techniques and data and other know-how and technical information, including inventions (including patentable inventions), practices, methods, concepts, know-how, trade secrets, documents, computer data, source code, apparatus, clinical and regulatory strategies and data, test data, analytical and quality control data, manufacturing data or descriptions, development information, drawings, specifications, designs, plans, proposals and technical data and manuals and all other proprietary information concerning the development, manufacture, production, quality control, storage, distribution and sale of N-Chlorotaruine or and any of its derivatives or analogs.

"Third Party" means any entity other than Pathogenics or Acuity or their Affiliates.

ARTICLE II
LICENSE GRANT; DILIGENCE OBLIGATION

2.1. License Grants to Acuity. Pathogenics hereby grants to Acuity, and Acuity hereby accepts from Pathogenics, a sole and exclusive (even as to Pathogenics) irrevocable right and license, including the right to sublicense, under and to Pathogenics Intellectual Property to make, have made, use, sell, offer for sale, import or otherwise commercialize N-Chlorotaurine and Licensed Products in the Field of Use with any territory.

2.2. Technology Transfer and Assistance. Pathogenics shall provide reasonable assistance to Acuity to effect the orderly transfer to Acuity of Pathogenics Know-How, including the transfer to Acuity of all Pathogenics Materials. Pathogenics will use reasonable efforts to provide this assistance to Acuity as soon as practicable. Pathogenics shall cooperate with Acuity in connection with efforts to develop and commercialize N-Chlorotaurine in the Field of Use.

2.3. No Restrictions on Business. Pathogenics agrees that Acuity is in the business of developing, and selling ophthalmic pharmaceutical products and that, subject to Section 3.2, nothing in this Agreement shall be construed as restricting such business or imposing on Acuity the duty to develop, register, market, and/or to sell Licensed Products hereunder to the exclusion of or in preference to any other product or otherwise preclude Acuity from developing other pharmaceutical products. Correspondingly, except as set forth herein, nothing herein shall be construed as restricting the business of Pathogenics.

2.4. Diligence: Development and Commercialization. Acuity shall use Commercially Reasonable Efforts to develop and commercialize the Licensed Product. The obligations set forth in this Section 2.4 are expressly conditioned upon the absence of any serious adverse conditions or event relating to the safety or efficacy of the Technology or Product including the absence of any action by any regulatory authority limiting the development or commercialization of the Technology or Product.

2.5. Sublicenses. Acuity shall have the right to grant sublicenses to any Third Party to develop, make, have made, use, import, offer for sale, market, commercialize, distribute and sell and otherwise dispose of the Technology or Product for use in the Field-of-Use and the Territory; provided, however that any such sublicense shall be consistent with the terms of this Agreement. In the event that Acuity proposes to grant a sublicense to any Third Party, Acuity shall give Pathogenics a written notice prior to entering into the sublicense describing the proposed sublicense, including the specific rights proposed to be sublicensed and the material commercial and professional terms of the proposed sublicense. Acuity shall also provide Pathogenics with a copy of any sublicense agreements. Upon any termination of this Agreement pursuant to Section 9.2, Pathogenics may elect to have any existing sublicense agreement(s) survive and be assigned by Acuity to Pathogenics provided that (i) the sublicensee is not in breach of its sublicense agreement at the time of such termination of this Agreement, and (ii) any sublicensee who desires its sublicense to survive shall promptly agree in writing to be bound by the applicable terms of and assume all obligations of Acuity under this Agreement.

ARTICLE III
AUSTRIA DEVELOPMENT PROGRAM

3.1. Austrian Clinical Trials. Acuity will have non-exclusive rights to all data resulting from the Austrian Clinical Trials. Pathogenics will use its best efforts to cause the researchers at the Institute and any person participating in the Austrian Clinical Trials to provide Acuity with all data resulting from such trials. Acuity shall treat all information disclosed to it under this Section 3.1 as Confidential Information (as herein defined).

3.2. Austrian Trial Acceleration Funding.

(a) Upon the completion of a Phase I clinical trial in Austria to study N-Chlorotaurine in the Field of Use, Pathogenics will use its best efforts to cause the researchers at the Institute and any person participating in the Austrian Clinical Trials to prepare, or cause to be prepared, and deliver to Acuity a final report for the Phase I clinical trial (the "**Final Report**"). Acuity shall treat all information disclosed to it under this Section 3.2 as Confidential Information (as herein defined).

(b) The scope and form of the Final Report shall be mutually agreed upon by Pathogenics and Acuity prior to its delivery.

(c) Acuity shall have thirty (30) days from the delivery of the Final Report to determine, in Acuity's sole reasonable discretion, if the Final Report justifies the initiation of a Phase II clinical trial in Austria.

(d) If Acuity determines that the Final Report justifies the initiation of a Phase II clinical trial in Austria:

(i) Acuity shall make available to the Institute and or the Phase II clinical investigators, up to $75,000 to be used to accelerate the Phase II clinical trial. Acuity, Pathogenics, and the researchers Institute and or the Phase II clinical investigators will jointly determine how this money will be utilized.

(ii) Acuity shall use its Commercially Reasonable Efforts to initiate chemistry, manufacturing and pre-clinical activities as are necessary to file an IND with the FDA to initiate a phase I clinical trial in the United States using N-Chlorotaurine as a treatment for an ophthalmic indication. Acuity shall own all right, title, and interest in any data generated in the course of such activities and all applications and data submitted to the any Agency. Acuity will provide Pathogenics with any data generated in the course of such activities and all applications and data submitted to any Agency, and Pathogenics will have non-exclusive rights to this information for research and development activities outside the Field of Use. Pathogenics shall treat all information disclosed to it under this Section 3.2 as Confidential Information (as herein defined).

(e) If Acuity determines that the Final Report fails to justify the initiation of a Phase II clinical trial in Austria and Pathogenics reasonably disagrees with this conclusion, Pathogenics shall have the right to terminate this Agreement upon thirty (30) days notice to Acuity of this determination if Acuity fails to reverse its determination during this thirty-day period.

ARTICLE IV
MILESTONES, FEES, AND ROYALTY PAYMENTS; ACCOUNTING

4.1. Austrian Phase I Clinical Trial Completion Fee. In consideration of the license grant provided by Pathogenics to Acuity, Acuity agrees to pay to Pathogenics a one time $100,000 payment upon the successful completion of the Austrian Phase I clinical trial.

4.2. Milestone Payments. In consideration of the license grant provided by Pathogenics to Acuity, and conditioned upon Acuity having determined that the Final Report justifies the initiation of a Phase II clinical trial in Austria, Acuity agrees to pay to Pathogenics, the following milestone payments upon the successful completion of the milestones set forth below for the first Licensed Product hereunder:

	Payment	Sublicense
US Phase I Clinical Trial initiated	$ 200,000	60%
US Phase II Clinical Trial initiated	$ 400,000	50%
US Phase III Clinical Trial initiated	$1,000,000	40%
EMEA Filing	$ 575,000	30%
US NDA Filing	$ 825,000	30%
Japan MHW Filing	$ 325,000	30%
EMEA Approval	$1,000,000	20%
US NDA Approval	$1,500,000	20%
Japan MHW Approval	$ 500,000	20%

(a) Each of the foregoing payments shall be made only once. Thereafter, no additional Milestone Payments shall be due or payable by Acuity to Pathogenics for License Products.

4.3. License Fee. In consideration for the license granted to Acuity under Section 2.1 of this Agreement, Acuity agrees to pay to Pathogenics a one time $50,000 license fee ("**License Fee**") within 2 business days of the execution of this Agreement.

4.4. Royalty Payments. During the Term, Acuity will pay to Pathogenics a royalty on all Net Sales of Licensed Products sold by Acuity and its Affiliates equal to six percent (6%) of Net Sales of Licensed Products.

4.5. Sublicense Fees. During the Term, Acuity will pay to Pathogenics a sublicense fee in a decreasing range as set forth above in Section 4.2 from a maximum of sixty percent (60%) to a minimum of twenty percent (20%) of the Net Sublicense Payments received by Acuity from sublicensees who sell Licensed Products pursuant to a sublicense agreement with Acuity, the sublicense fee depending upon what milestone stage has been successfully completed. Prior to the successful completion of the first milestone as set forth above in Section 4.2, any Third Party sublicensee shall be treated for the purpose of this section as an Affiliate of Acuity, and Acuity shall pay Pathogenics a pass through royalty on all Net Sales of Licensed Products sold by its Third Party sublicensees equal to six percent (6%) of Net Sales of Licensed Products as set forth above in Section 4.4.

4.6. Withholding Taxes. Acuity shall be entitled to deduct from its payments to Pathogenics the amount of any withholding taxes, value-added taxes or other taxes, levies or charges with respect to such amounts payable by Acuity, or any taxes in each case required to be withheld by Acuity to the extent Acuity pays the appropriate governmental authority on behalf of Pathogenics such taxes, levies or charges. Acuity shall deliver to Pathogenics, upon reasonable request, proof of payment of all such taxes, levies and other charges and appropriate documentation which is necessary to obtain a tax credit, to the extent such tax credit can be obtained.

4.7. Timing of Payments

(a) Acuity shall provide written notice to Pathogenics the satisfaction of such milestone trigger.

(b) Acuity will pay the applicable milestone payments within thirty (30) days of written notice of the achievement of the applicable milestone.

(c) Royalties and Sublicense Fees payable under Section 4.4 or Section 4.5 will be paid not later than sixty (60) days following the end of each Fiscal Quarter, or not later than sixty (60) days from the date that is as soon thereafter as may be practicable in order for Acuity to determine the royalty payable. All payments shall be accompanied by a report in writing showing for the quarter for which such royalty payment applies: (i) the Net Sales of Licensed Products for which royalties are required pursuant to Section 4.4 (along with a reasonably detailed description of the calculation thereof) in United States dollars; (ii) the Sublicense Fees payable pursuant to Section 4.5 in United States dollars; and (iii) the withholding taxes, if any, required by law to be deducted with respect to such royalties and Sublicense Fees and the amounts paid to the appropriate governmental authority with respect to such royalties and Sublicense Fees.

4.8. Minimum Annual License Fee. If total payments (including any payments required pursuant to Section 3.2 or Sections 4.1 through 4.5) required to paid to Pathogenics for the annual periods set forth below are less than the minimum amount set forth below, Acuity shall pay Pathogenics an amount (the "Annual Minimum Payment") for that annual period equal to the difference between the total payments required for such annual period and the Annual Minimum Payment owing for that annual period. Such payment shall be made within forty five days of the end of each applicable year of this Agreement. For the year ended December 31, 2007, the Annual Minimum Payment shall be $50,000. For the years ended December 31, 2008, 2009 and 2010, the Annual Minimum Payment shall be $100,000. For the years ended December 31, 2011 and 2012, the Annual Minimum Payment shall be $200,000. For the year ended December 31, 2013, the Annual Minimum Payment shall be $1,500,000.

4.9. No Other Payments. Pathogenics acknowledges and agrees that other than the payments provided in this Article IV and Section 3.2(d)(i) and all other payment, indemnity and reimbursement obligations set forth in this Agreement, Pathogenics shall not be entitled to any amounts received by Acuity or its Affiliates and sublicensees from the use, commercialization, license or sale of its rights under this Agreement, regardless of the form or manner of payment (including milestones, royalties or other amounts).

4.10. Audit. Acuity shall maintain and shall require its Affiliates and sublicensees to maintain, at their respective offices accurate and complete books and records of the Net Sales of Licensed Products, consistent with sound business and accounting practices. Upon the written request Pathogenics, but not more than once in any calendar year, Acuity shall permit an independent certified public accounting firm of nationally recognized standing, selected by Pathogenics and acceptable to Acuity, to have access during normal business hours to such records of Acuity as shall be necessary to verify the accuracy of the royalty reports provided hereunder for any year ending not more than thirty-six (36) months prior to the date of

such request. The accounting firm shall disclose to Pathogenics only whether the records are accurate or not and the specific details concerning any discrepancies, and shall provide a copy of its report to Acuity. No other information shall be shared. If the audit of royalties shows an underpayment of royalty payments by Acuity of more than the greater of (i) $25,000 or (ii) ten percent (10%), then the expenses of the audit of royalties shall be borne by Acuity; otherwise the expenses of the audit of royalties shall be borne by Pathogenics. If such accounting firm concludes that additional royalties were owed or that royalties were overpaid during such period, then Acuity shall pay the additional royalties or Pathogenics shall credit or pay Acuity such overpayment within thirty (30) days of the date that such accounting firm's written report is delivered to the parties.

4.11. Confidential Financial Information. Each Party shall treat all financial information of the other Party as Confidential Information of the other Party, and shall retain and shall cause its employees and agents to retain, all such financial information in confidence.

ARTICLE V
CERTAIN PROVISIONS REGARDING PATENTS

5.1. Patent Filings, Prosecution and Maintenance of Pathogenics Patent Rights.

(a) Acuity shall have the first right, using in-house or outside legal counsel selected at Acuity's sole discretion, to prepare, file, prosecute, maintain and extend patent applications and patents concerning all such Pathogenics Patent Rights in the United States and any foreign country that Pathogenics chooses in its sole discretion, for which Acuity shall bear the costs relating to such activities. If Pathogenics licenses any of the Pathogenics Patent Rights to a Third Party for use outside the Field-of-Use, then Acuity shall be reimbursed or credited a pro-rata portion (i.e., in the event there is one other Third Party licensee — Acuity receives 50% reimbursement; two Third Party licensee's — Acuity receives 67% reimbursement, etc.) of all patent prosecution and maintenance costs. Pathogenics patent attorney shall be involved in the preparation and prosecution of patent applications concerning Pathogenics Patent Rights. Acuity shall solicit Pathogenics' advice and review of the nature and text of any such patent applications in reasonably sufficient time prior to filing thereof, and Pathogenics shall take into account Acuity's reasonable comments related thereto. Pathogenics and Acuity shall treat all information disclosed to it under this Section 5.1 as Confidential Information (as herein defined).

(b) If Acuity elects not to file, prosecute or maintain any Pathogenics Patent Rights or any ensuing Patents or claims encompassed by any Pathogenics Patent Rights in the United States or any foreign country, Acuity shall give Pathogenics notice thereof within a reasonable period prior to allowing such patent applications or Patents or such claims encompassed by such patent applications or Patents to lapse or become abandoned or unenforceable, and Pathogenics shall thereafter have the right, at its sole expense, to prepare, file, prosecute and maintain patent applications and patents or divisional applications related to such claims encompassed by such patent applications or patents concerning all such inventions and discoveries in countries of its choice throughout the world. Thereafter, Acuity's license grant per Section 2.1 and all other license rights and royalty obligations under this Agreement

related to that Pathogenics Patent Right in such country (and only in such country) shall terminate and such patent or patent application in such country shall no longer be deemed a part of this Agreement. The termination of license grant or other license rights shall not affect any other rights or obligations accrued by either Party prior to the effective date of such termination.

5.2. Enforcement of Pathogenics Patent Rights.

(a) In the event that a Party learns that any Pathogenics Patent Rights necessary for the development, manufacture, use and/or sale of any Licensed Product are infringed or misappropriated by activities of a Third Party in any country, or are subject to a declaratory judgment action arising from such infringement in such country, such Party shall promptly notify the other Party hereto.

(b) Pathogenics shall have the initial right (but not the obligation) to enforce such Pathogenics Patent Rights, or defend any declaratory judgment action with respect thereto, at its expense.

(c) In the event that Pathogenics fails to initiate a suit to enforce such Pathogenics Patent Rights against such a Third Party in any jurisdiction within sixty (60) days after notification of such infringement or decides that does not desire to defend such declaratory judgment action, Acuity may initiate such suit in the name of Pathogenics with regard to the applicable Pathogenics Patent Rights against such infringement or assume the defense of the declaratory judgment action, at the expense of Acuity. The Party involved in any such claim, suit or proceeding (the "**Enforcing Party**"), shall keep the other Party hereto reasonably informed of the progress of any such claim, suit or proceeding and shall allow the other Party to participate in the action at the other Party's sole cost and expense. Pathogenics and Acuity shall recover their respective actual out-of-pocket expenses, or equitable proportions thereof, associated with any litigation or settlement thereof from any recovery made by any Party. Any remaining amounts shall be distributed between the Enforcing Party, with the Enforcing Party receiving 75% of any such net recovery and the other Party 25%.

5.3. Injunction and/or Failure to Obtain Third Party License. Without limiting any other remedy that may be available to Acuity under this Agreement, Acuity shall have the right to terminate this Agreement in its entirety or only as to the affected country, immediately upon written notice to Pathogenics if at any time during the term of this Agreement: (i) a permanent injunction is issued by a court of competent jurisdiction enjoining Acuity's sale of Licensed Products in a country, or (ii) Acuity ceases the sale of Licensed Products in a country as a result of a failure of either Party to obtain, upon commercially reasonable terms, a license (or immunity from suit) from a Third Party alleging infringement in such country.

ARTICLE VI
CONFIDENTIALITY

6.1. Confidentiality and Non-Use Obligations. (a) During the Term of this Agreement and for five (5) years thereafter without regard to the means of termination, neither Acuity nor Pathogenics shall use, for any purpose other than the purposes of this Agreement, reveal or disclose to any Third Party information and materials disclosed by the other Party

(whether prior to or during the Term of this Agreement), and marked as confidential or for which the receiving Party knows or has reason to know are or contain trade secrets or other proprietary information of the other Party (the "Confidential Information") without first obtaining the written consent of the other Party.

(b) The Parties shall take all reasonable precautions to prevent the use or disclosure of such Confidential Information without first obtaining the written consent of the other Party, except (i) as may be required for securing regulatory approval, including pricing approval in the United States and any foreign country, or as may otherwise be required to be disclosed to an Agency in the United States and any foreign country; or (ii) as required in connection with any filings made by the Securities and Exchange Commission or similar non-U.S. regulatory authorities or by the disclosure policies of a major stock exchange. Each Party agrees that prior to the release or dissemination of the other Party's Confidential Information to any Affiliate or sublicensee, such Party shall cause the person to whom such Confidential Information is to be released to be bound by a confidentiality agreement providing for a level of protection of such Confidential Information at least equivalent to the terms of this Article VI.

(c) These restrictions upon disclosure and use of Confidential Information shall not apply to any specific portion of Confidential Information which:

(i) is Confidential Information that can be demonstrated by the written records of the recipient to have already been in the possession of the recipient free of any restrictions as to its use or disclosure at the time of disclosure by the other Party;

(ii) is or later becomes available to the public, as evidenced by documents which were generally published, other than by the fault of the recipient; or

(iii) is received from a Third Party having legitimate possession thereof and the independent legal right to make such disclosure and such Third Party does not place any restriction as to the use or disclosure on the recipient.

(d) Any patent applications and information therein filed or to be filed by either Party shall be deemed (i) to be Confidential Information of that Party subject to the provisions of this Article VI and (ii) to have been disclosed in confidence to the other Party.

(e) Notwithstanding the foregoing, the recipient may disclose any Confidential Information to the extent required by an order of any court or other governmental authority having competent jurisdiction, but only after the other Party is (i) notified in writing and provided with a copy of such order; and (ii) given an opportunity to prevent such disclosure or obtain reasonable protection for such Confidential Information. In any such event, the recipient shall cooperate fully with other Party in connection with obtaining any protective order or other appropriate remedy to prevent disclosure of Confidential Information.

(f) Notwithstanding the foregoing, the recipient may disclose any Confidential Information to any Agency as may be required by law or in connection with any application to test, sell or market a Licensed Product.

6.2. Press Releases and Public Announcements. Neither Party to this Agreement shall issue any press release or other publicity materials, or make any public presentation with respect to the terms or conditions of this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed). The restrictions provided in this Section 6.2 shall not apply to disclosures deemed by the Parties in their discretion to be required by law or regulation, including as may be required in connection with any filings made with the Securities and Exchange Commission or any similar non-U.S. regulatory authority, or by the disclosure policies of the Nasdaq Stock Market, Inc.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES

7.1. Legal and Governmental Compliance. Each Party shall comply with all laws, rules and regulations applicable to the activities undertaken by such Party hereunder.

7.2. Pathogenics Representations and Warranties. Pathogenics represents and warrants to Acuity that the following are true and correct as of the date hereof:

(a) Pathogenics is a Delaware corporation duly organized, validly existing, and in good standing under the laws of Delaware and has full corporate power to own its properties and conduct the business presently being conducted by it, and is duly qualified to do business in, and is in good standing under, the laws of all jurisdictions in which its activities or assets require such status, except in any case where the failure to be so qualified and in good standing would not be material.

(b) Pathogenics has full corporate right, power and authority to perform its obligations pursuant to this Agreement, and this Agreement and the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of Pathogenics. This Agreement has been duly and validly executed by Pathogenics. Upon execution and delivery of this Agreement, it will be the valid and binding obligation of Pathogenics, enforceable in accordance with its terms, subject to equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditor's right and remedies generally.

(c) The execution, delivery and performance of this Agreement does not, and the consummation of the transactions herein contemplated will not violate any law, rule, regulation, order, judgment or decree binding on Pathogenics, or result in a breach of any term of the certificate of incorporation or by-laws of Pathogenics or any contract, agreement or other instrument to which Pathogenics is a party, except in each case to an extent not material.

(d) Pathogenics is the sole owner of the entire right, title and interest in and to the Pathogenics Patent Rights and no other Person (including any government) has any license, claim or other right or interest in or to the Pathogenics Patent Rights as of the Effective Date.

(e) To Pathogenics' actual knowledge, the use of the Pathogenics Intellectual Property in the development, manufacture and sale of the License Products will not

infringe, misappropriate or otherwise conflict with any intellectual property or other rights of any Third Party as of the Effective Date.

(f) Pathogenics is not aware of any infringement of the Pathogenics Patent Rights as of the Effective Date.

(g) There are no judicial, arbitral, regulatory or administrative proceedings or investigations, claims, actions or suits relating to the Pathogenics Patent Rights pending against or, to Pathogenics' knowledge, threatened against Pathogenics or its Affiliates in any court or by or before any governmental body or agency in the United States or any foreign country.

7.3. Representations and Warranties of Acuity. Acuity represents and warrants to Pathogenics that the following are true and correct as of the date hereof:

(a) Acuity is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full corporate power to own its properties and conduct the business presently being conducted by it, and is duly qualified to do business in, and is in good standing under, the laws of all states in which its activities or assets require such status, except in any case where the failure to be so qualified and in good standing would not be material.

(b) Acuity has full corporate right, power and authority to perform its obligations pursuant to this Agreement, and this Agreement and the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of Acuity. This Agreement has been duly and validly executed by Acuity. Upon execution and delivery of this Agreement, it will be the valid and binding obligation of Acuity enforceable in accordance with its terms, subject to equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditor's rights and remedies generally.

(c) The execution, delivery and performance of this Agreement does not, and the consummation of the transactions therein contemplated will not violate any law, rule, regulation, order, judgment or decree binding on Acuity or result in a breach of any term of the certificate of incorporation or by-laws of Acuity or any contract, agreement or other instrument to which Acuity is a party, except in each case to an extent not material. No authorization is required by Acuity for the execution, delivery, or performance of this Agreement by Acuity, except in each case to an extent not material.

7.4. Limitation on Warranties. Except as expressly provided in this Agreement, neither Party makes any representation or warranty to the other, whether express or implied, either in fact or by operation of law, by statute or otherwise, and both Parties specifically disclaim any and all implied or statutory warranties, including, without limitation, any warranty of merchantability or warranty of fitness for a particular purpose. In addition, each Party understands and agrees that neither Party warrants or commits that Licensed Products will be successfully developed, be submitted for applicable regulatory approval, receive applicable regulatory approval or be successfully marketed or commercialized. Without limiting the indemnity obligations set forth in Article XII for the items described therein, neither Party shall

have liability or responsibility to the other Party for any such failure in the research and development, Agency approval, manufacturing, marketing or sales efforts, except to the extent such failure results from the Party's willful misconduct or gross negligence.

ARTICLE VIII
INDEMNIFICATION

8.1. Indemnification.

(a) *Acuity Indemnification*. Acuity agrees to indemnify and hold forever harmless Pathogenics and its Affiliates and each of their agents, directors, officers and employees from and against any loss, damage, action, proceeding, expense, liability, physical or emotional injury or death, or loss of service or consortium, including reasonable attorney's fees ("Loss") arising from or in connection with (i) the research, development, manufacture, use, offer for sale, sale or importation by Acuity or its Affiliates of Licensed, except for any Loss for which Pathogenics has agreed to indemnify Acuity pursuant to Section 9.1(b) below; (ii) the breach or inaccuracy of any representations, warranties or covenants made by Acuity in this Agreement; and (iii) the gross negligence or willful misconduct of Acuity or its Affiliates or any of their agents, directors officers or employees.

(b) *Pathogenics Indemnification*. Pathogenics agrees to indemnify and hold forever harmless Acuity and its Affiliates and each of their agents, directors, officers, and employees from and against any Loss arising from or in connection with: (i) Pathogenics' or its Affiliates' research and development activities in connection with any pharmaceutical product or the activities of any Pathogenics personnel in connection with the research, development, manufacture, use, sale, storage or handling of pharmaceutical products, except for any Loss for which Acuity has agreed to indemnify Pathogenics pursuant to Section 9.1(a) above; and (ii) the breach or inaccuracy of any representations, warranties or covenants made by Pathogenics in this Agreement, (iii) the gross negligence or willful misconduct of Pathogenics or its Affiliates or any of their agents, directors, officers or employees.

8.2. Procedure. A Party seeking indemnity hereunder (an "**Indemnified Party**") shall promptly notify the other Party (the "**Indemnifying Party**") upon being notified or otherwise made aware of a suit, action or claim; provided that failure to provide such notice shall not affect the obligation of the Indemnifying Party to indemnify except to the extent that the Indemnifying Party is materially prejudiced thereby. The Indemnifying Party shall defend and control any proceedings, and the Indemnified Party shall be permitted to participate at its own expense, unless there shall be a conflict of interest which would prevent representation by joint counsel, in which event the Indemnifying Party shall pay for the Indemnified Party's separate counsel pursuant to Section 11.1 above. The Indemnifying Party may not settle the suit or otherwise consent to any judgment in such suit without the written consent of the Indemnified Party (such consent not to be unreasonably withheld or delayed). The Parties shall cooperate in the defense of any Third Party claim.

8.3. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES OR EXPENSES, INCLUDING DAMAGES FOR LOST PROFITS, LOSS OF OPPORTUNITY OR

USE OF ANY KIND, SUFFERED BY THE OTHER PARTY, WHETHER IN CONTRACT, TORT OR OTHERWISE.

ARTICLE IX
TERM; TERMINATION

9.1. Term. This Agreement shall take effect as of the date hereof and upon the receipt of the License Fee by Pathogenics and shall continue in effect for shorter of (a) 20 years, or (b) the last to expire of the Pathogenics Patent Rights, unless earlier terminated in accordance with the provisions of this Article IX (such date being referred to as the "**Termination Date**").

9.2. Termination of Agreement. This Agreement may be terminated:

(a) By Acuity at any for any reason whatsoever. Prior to exercising this termination right, Acuity shall (i) cease making, having made, using and selling any Licensed Products, (ii) revoke all sublicenses causing all sublicensees to cease making, having made, using and selling Licensed Products; and (ii) give notice to Pathogenics of such cessation and of Acuity's election to terminate. Acuity will be required to pay all payments provided in Article IV which have been earned up and though such date that Acuity provides notice of its termination.

(b) By mutual written consent of each of Pathogenics and Acuity; or

(c) By either Acuity or Pathogenics, upon written notice to the other Party if (i) the other Party shall have been dissolved, ceased active business operations or liquidated, unless such dissolution, cessation or liquidation results from reorganization, acquisition, merger or similar event, or (ii) bankruptcy or insolvency proceedings, including any proceeding under Title 11 of the U.S. Code, have been brought by or against the other Party and, in the event such a proceeding has been brought against the other Party, remains undismissed for a period of sixty (60) days, or an assignment has been made for the benefit of such Party's creditors or a receiver of such Party's assets has been appointed (a "**Bankruptcy Event**"); or

(d) By either Acuity or Pathogenics, upon ninety (90) days prior written notice, if the other Party is in material default, and fails to cure such breach within ninety (90) days following receipt of written notice from the non-breaching Party specifying the breach to be cured.

9.3. Surviving Rights. Termination of this Agreement for any reason shall be without prejudice to:

(a) The rights and obligations of the parties provided in Articles VI and VIII hereof, and the representations and warranties provided in Article VII, all of which shall survive such termination;

(b) Any other rights, obligations or liabilities which shall have accrued to the benefit of either Party prior to such termination (including without limitation Acuity's obligation to pay all milestone and royalty payments which shall have accrued hereunder up to

and including the effective date of such termination), all of which shall survive such termination; and

(c) Any other rights of remedies provided at law or in equity which either party may otherwise have against the other.

ARTICLE X
MISCELLANEOUS

10.1. Force Majeure. Neither Party shall lose any rights hereunder or be liable to the other Party for damages or loss on account of failure of performance by the defaulting Party if the failure is occasioned by government action, war, fire, explosion, flood, strike, lockout, embargo, act of God, or any other similar cause beyond the reasonable control of the defaulting Party, provided that the Party claiming force majeure has exerted all reasonable efforts to avoid or remedy such force majeure and given prompt notice to the other Party.

10.2. Notices. All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be delivered by hand, sent via overnight courier, sent by facsimile, or mailed by first class certified or registered mail, return receipt requested, postage prepaid:

If to Acuity: to
Acuity Pharmaceuticals, Inc.
3701 Market Street
Philadelphia, PA, 19104
Attn: Dale R. Pfost, Ph.D.

With a copy to:
Pepper Hamilton LLP
3000 Two Logan Square
Philadelphia, PA 19103
Attn: Ilan Katz

If to Pathogenics: to
Pathogenics, Inc.
99 Derby Street, Suite 200
Hingham, MA 02043
Attn: Frederic P. Zotos, Esq.

or to such other person or entity or at such other address as any party shall designate by notice to the other in accordance herewith.

Notices provided in accordance with this Section 10.2 shall be deemed delivered (i) upon personal delivery with signature required, (ii) one Business Day after they have been sent to the recipient by reputable overnight courier service (charges prepaid and signature required) (iii) upon confirmation, answer back received, of successful transmission of a facsimile message containing such notice if sent between 9:00 a.m. and 5:00 p.m., local time of the recipient, on any Business Day, and as of 9:00 a.m. local time of the recipient on the next Business Day if sent at any other time, or (iv) three Business Days after deposit in the mail. The term “Business Day” as used in this Section 10.2 shall mean any day other than Saturday, Sunday or a day on which banking institutions are not required to be open in the State of Delaware.

10.3. Governing Law; Dispute Resolution.

(a) This Agreement shall be governed by the laws of the State of Delaware, as such laws are applied to contracts entered into and to be performed within such state, as though made and to be fully performed therein without regard to conflicts of law principles thereof. The Parties agree to submit to the personal jurisdiction in any Federal or State court of competent jurisdiction seated in the State of Delaware, and waive any objection as to venue or inconvenience of forum.

(b) The Parties shall initially attempt in good faith to resolve any significant controversy, claim, allegation of a Default or dispute arising out of or relating to this Agreement (hereinafter collectively referred to as a "Dispute") through negotiations between senior executives of Acuity and Pathogenics. If the Dispute is not resolved within thirty (30) days (or such other period of time mutually agreed upon by the Parties) of notice of the Dispute, then the Parties agree to submit the Dispute to non-binding mediation on terms and procedures to be mutually agreed to for a period of ninety (90) days. Any mediation proceedings shall be treated as settlement discussions and therefore shall be confidential, and no mediator may testify for either Party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings. Each Party shall bear its own costs and expenses of mediation, and the Parties shall share equally the fees and expenses of the mediator.

(c) If the Dispute is not resolved through negotiations or mediation as set forth above, then either Party may commence litigation; provided, that this Section 10.3 shall not be construed to prevent a Party from seeking injunctive relief without observing the requirements of Section 10.3(b).

10.4. Non-waiver of Rights. Except as specifically provided for herein, the waiver from time to time by any of the Parties of any of their rights or their failure to exercise any remedy shall not operate or be construed as a continuing waiver of same or of any other of such Party's rights or remedies provided in this Agreement.

10.5. No Agency. Neither Party shall by virtue of this Agreement have any power to bind the other to any obligation nor shall this Agreement create any relationship of agency, partnership or joint venture.

10.6. Severability. If any term, covenant, or condition of this Agreement or the application thereof to any Party or circumstance shall, to any extent, be held to be invalid or unenforceable, then (i) subject to clause (ii) of this Section 13.6 the remainder of this Agreement, or the application of such term, covenant or condition other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law and (ii) the Parties hereto covenant and agree to renegotiate any such term, covenant, or application thereof in good faith in order to provide a reasonably acceptable alternative to the term, covenant, or condition of this Agreement or the application thereof that is invalid or unenforceable.

10.7. Entire Agreement. This Agreement, including the exhibits and schedules hereto as in effect from time to time pursuant to the terms hereof, sets forth all the covenants,

promises, agreements, warranties, representations, conditions, and understandings between the Parties hereto in the scope of the collaboration, and supersedes and terminates all prior agreements and understanding between the parties under this Agreement. No subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon the Parties hereto unless reduced to writing and signed by the respective authorized officers of the Parties.

10.8. Assignment. No Party shall, without the prior written consent (not to be unreasonably withheld or delayed) of the other Party having been obtained, assign or transfer this Agreement to any Third Party, provided, however, that any Party may assign or transfer this Agreement to any Affiliate, provided that the assigning Party shall guarantee the performance of that Affiliate, or to any successor by merger of such Party, or to the Purchaser of all or substantially all of such assets of its business, without the prior written consent of the other Party hereto. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their successors and permitted assigns.

10.9. Facsimile Execution. This Agreement may be executed in facsimile counterparts each of which is hereby agreed to have the legal binding effect of an original signature. The Parties hereto agree to forward the original signatures by overnight mail to the other Party upon execution.

10.10. License Survival During Bankruptcy. All rights and licenses granted under or pursuant to this Agreement to the Pathogenics Intellectual Property are, and shall otherwise be deemed to be, for purposes of Paragraph 365(n) of the U.S. Bankruptcy Code, licenses of rights to "Intellectual Property" as defined under Paragraph 101(35A) of the U.S. Bankruptcy Code. The parties agree that Acuity, as a licensee of such rights under this Agreement, shall retain and may fully exercise all of its rights and elections under the U.S. Bankruptcy Code, subject to performance by Acuity of its obligations under this Agreement. The parties further agree that, in the event Pathogenics elects to terminate this Agreement because of a Bankruptcy Event and Acuity elects to continue the licenses under this Agreement as contemplated by the preceding sentence, then Acuity shall be entitled, upon reasonable request, to have access, in confidence, to such of Pathogenics Intellectual Property not already in Acuity's possession, as shall be reasonably necessary to make use of the license rights under this Agreement without participation by Pathogenics.

****

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first indicated above.

ACUITY PHARMACEUTICALS, INC.

By: /s/ Dale R. Pfost
Name: Dale R. Pfost
Title: President and Chief Executive Officer

PATHOGENICS, INC.

By: /s/ Frederic P. Zotos
Name: Frederic P. Zotos
Title: President and Chief Executive Officer

EXHIBIT A

PATHOGENICS PATENT RIGHTS

1 DE 102005023198.5; Filing Date: May 14, 2005; entitled “Aqueous solutions containing chloramine which are free from di- and trichloroamine, as well as from ammonia.”

2 DE 102005038992.9; Filing Date: August, 16, 2005; entitled “Substance against protozoa and its application.”

EXHIBIT 10.10

AMENDMENT NO. 1 TO

LICENSE AGREEMENT

Amendment No. 1 to License (this "**Amendment**") made as of August 2, 2006, by and between **Acuity Pharmaceuticals, Inc.,** a Delaware corporation, with its principal offices at 3701 Market Street, Philadelphia, PA, 19104 ("**Acuity**") and **Pathogenics, Inc**., a Delaware Corporation with its principal offices at 99 Derby Street, Suite 200, Hingham, MA 02043 ("**Pathogenics**")**.**

BACKGROUND

WHEREAS, Acuity and Pathogenics entered into a License Agreement (the "**License Agreement**") on April 13, 2006;

WHEREAS, Section 3.2(d)(i) of the License Agreement provided for a payment by Acuity of up to $75,000 to be used the Institute of Hygiene and Social Medicine, Leopold-Franzens-University of Innsbruck, Austria and or the Phase II clinical investigators to be used to accelerate recruitment into a Phase II clinical trial;

WHEREAS, Pathogenics has requested that Acuity make available $3,830 to Pathogenics to be used to fund activities to accelerate recruitment into a Phase I clinical trial; and

WHEREAS, Acuity has agreed to fund the $3,830 provided that it be credited against the $75,000 referenced in Section 3.2(d)(i) of the License Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements, representations and warranties hereinafter set forth, and intending to be legally bound, the Parties hereby agree as follows:

1. Acuity hereby agrees to pay $3,830 to Pathogenics to be used to fund activities to accelerate recruitment into a Phase I clinical trial

2. Pathogenics hereby agrees that the $3,830 shall be credited against the $75,000 referenced in Section 3.2(d)(i) of the License Agreement.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized representatives as of the day and year first indicated above.

ACUITY PHARMACEUTICALS, INC.

By: /s Dale R. Pfost
Name: Dale R. Pfost
Title: President and Chief Executive Officer

PATHOGENICS, INC.

By: /s/ Frederic P. Zotos
Name: Frederic P. Zotos
Title: President and Chief Executive Officer

EXHIBIT 10.11

AMENDMENT NO. 2 TO

LICENSE AGREEMENT

Amendment No. 2 to License (this "**Amendment**") made as of March 8, 2007, by and between **Acuity Pharmaceuticals, Inc.,** a Delaware corporation, with its principal offices at 3701 Market Street, Philadelphia, PA, 19104 ("**Acuity**") and **Pathogenics, Inc**., a Delaware Corporation with its principal offices at 99 Derby Street, Suite 200, Hingham, MA 02043 ("**Pathogenics**")**.**

BACKGROUND

WHEREAS, Acuity and Pathogenics entered into a License Agreement (the "**License Agreement**") on April 13, 2006 which was amended on August 2, 2006;

WHEREAS, Pathogenics and Acuity have agreed to enter into this Amendment to amend and restate section 4.7(a) to provide that Acuity will provide notice to Pathogenics of the achievement of a milestone within two (2) business days of the achievement of such milestone.

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements, representations and warranties hereinafter set forth, and intending to be legally bound, the Parties hereby agree as follows:

1. Section 4.7(a) of the License Agreement shall be replaced with the following new Section 4.7(a):

"(a) Acuity shall provide written notice to Pathogenics the satisfaction of such milestone trigger within two (2) business days of the achievement of each applicable milestone."

(Signature Page Follows)

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized representatives as of the day and year first indicated above.

ACUITY PHARMACEUTICALS, INC.

By: /s/ Dale R. Pfost
Name: Dale R. Pfost
Title: President and Chief Executive Officer

PATHOGENICS, INC.

By: /s/ Frederic P. Zotos
Name: Frederic P. Zotos
Title: President and Chief Executive Officer

EXHIBIT 10.12

LICENSE AND COLLABORATION AGREEMENT

License and Collaboration Agreement (this "Agreement") made as of June 2, 2005, by and between **Acuity Pharmaceuticals, Inc.,** a Delaware corporation, with its principal offices at 3701 Market Street, Philadelphia, PA, 19104 ("**Acuity**") and **Intradigm Corporation** with its principal offices at 12115 Parklawn Drive, Suite K, Rockville, MD 20852 ("**Intradigm**"), (Acuity and Intradigm are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**").

BACKGROUND

WHEREAS, Intradigm is an RNAi delivery technology company, with proprietary technology and expertise in drug delivery;

WHEREAS, Intradigm has developed formulation and drug delivery technology with commercial promise for formulation of oligonucleotides to enhance and aid in delivery to desired target tissues that may be applicable to the development of ophthalmic therapeutics that can be delivered less invasively than intra-ocular injection, such as topical application.

WHEREAS, Acuity has proprietary technology and expertise in the area of ophthalmic pharmaceutical clinical development;

WHEREAS, Acuity and Intradigm share a mutual interest in a collaboration aimed at the further development and commercialization of a therapeutic encompassing or employing a short interfering RNA (an "**siRNA**") that is deliverable to the posterior pole of the eye which may be administered by topical application for pharmaceutical use in humans (the "**Topical siRNA**"); and

WHEREAS, Acuity and Intradigm intend to utilize their capabilities, capitalize on each other's expertise, and put forth commercially reasonable efforts to achieve the objectives of this collaboration.

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements, representations and warranties hereinafter set forth, and intending to be legally bound, the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS

"Acuity Improvements" means any improvements to the Acuity Patent Rights and Acuity Know-how, in each case owned by Acuity as of the date hereof, that are conceived, created, developed, and/or otherwise invented by Acuity, by Intradigm, or jointly by Acuity and Intradigm, under the Research and Development Plan or pursuant to this Agreement.

"Acuity Intellectual Property" means the Acuity Patent Rights, Acuity Improvements, and the Acuity Know-how.

"Acuity Know-how" means Technical Information owned, developed, or controlled by Acuity (other than as a result of this Agreement) as of the date of this Agreement or during the Term of this Agreement.

"Acuity Patent Rights" means any valid claim of any Patent issued based on a patent application previously or hereafter filed by or on behalf of Acuity or subsequently assigned, licensed, or granted to, or acquired by, Acuity (other than pursuant to this Agreement), including without limitation Patents and patent applications based on Acuity Improvements.

"Affiliate" means any entity that directly or indirectly Owns, is Owned by, or is under common Ownership with a Party to this Agreement. "Owns" or "Ownership" means direct or indirect possession of more than fifty percent (50%) of the votes of holders of a corporation's voting securities or a comparable equity interest in any other type of entity.

"Agency" means the FDA or any governmental regulatory authority responsible for granting approvals for the sale of the Topical siRNA in the United States or any foreign country.

"Agreement" means this Agreement, together with all exhibits and attachments.

"Clinical Trials" means all trials and studies of the application of the Topical siRNA on humans or clinical studies performed by Acuity for any purpose including without limitation for purposes of obtaining Regulatory Approval in the United States or any foreign country and marketing of the Topical siRNA in the United States or any foreign country.

"Commercially Reasonable Efforts" means, with respect to the efforts to be expended by a Party with respect to any objective, diligent, good faith efforts to accomplish such objective as such Party would normally use to accomplish a similar objective under similar circumstances, it being understood and agreed that with respect to the development and commercialization of Topical siRNA, such efforts shall be substantially equivalent to those efforts and resources commonly used by a bio-pharmaceutical company for a similar pharmaceutical product owned by it or to which it has rights, which product is at a similar stage in its development or product life and is of similar market potential taking into account efficacy, safety, approved labeling, the competitiveness of alternative products in the marketplace, the patent and other proprietary position of the product, the likelihood of regulatory approval given the regulatory structure involved, the profitability of the product including the royalties payable to Third Parties, alternative products and other relevant factors. In evaluating profit potential or strategic value Acuity shall not consider the payments required to be made to Intradigm under this Agreement.

"Confidential Information" has the meaning set forth in Section 9.1.

"Control" means, with respect to an item of information or intellectual property right, the possession of the ability to grant a license or sublicense as provided for herein under such item or right without violating the terms of any agreement or other arrangement, express or implied, with any Third Party.

"**Critical Field of Use**" means the treatment of ophthalmic diseases characterized by excessive or unwanted neovasculature, angiogenesis or leakage such as but not limited to Wet AMD, diabetic retinopathy, diabetic macular edema, retinal vein occlusion, neovascular

glaucoma, retinopathy of prematurity, Von Hippel Angioma, von-hippel landau, Corneal Neovascularization, Rubeosis, Pterygium or Iris Neovascularization as well as, dry AMD, drusen and uveitis.

"**Effective Date**" means the day and year first indicated above.

"**Excluded Field of Use**" means the treatment of ophthalmic diseases in the Critical Field of Use or Non-Critical Field of Use (other than through the use of the Topical siRNA) in which a drug is delivered through systemic administration **only** (and not through, in whole or in part, topical application, ocular injection or any other method).

"**Excluded Territory**" means China, Hong Kong, Taiwan, Japan, Korea, Singapore, Thailand, Indonesia, Malaysia, Australia and New Zealand.

"FDA" means the United States Food and Drug Administration, or any successor thereto.

"Fiscal Quarter" means each period of three (3) months ending on March 31, June 30, September 30, or December 31.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States.

"**IND**" means an "investigational new drug application" as defined by the United States Food, Drug, and Cosmetic Act, as amended (the "Act"), and applicable FDA rules and regulations or a foreign equivalent.

"Intradigm Improvements" means any improvements to the Intradigm Patent Rights and Intradigm Know-how, in each case owned by Intradigm as of the date hereof, that are conceived, created, developed, and/or otherwise invented by Intradigm, by Acuity, or jointly by Intradigm and Acuity, under the Research and Development Plan or pursuant to this Agreement.

"Intradigm Intellectual Property" means the Intradigm Patent Rights, Intradigm Improvements, and the Intradigm Know-how.

"Intradigm Know-how" means Technical Information owned, developed, or controlled by Intradigm as of the date of this Agreement or during the Term of this Agreement.

"Intradigm Novel siRNA Target" means a gene or mRNA that could be targeted with siRNA identified in the Intradigm Patent Rights, where the gene or mRNA has not previously been described in the literature or otherwise known to Acuity.

"Intradigm Patent Rights" means any valid claim of any Patent issued based on a patent application previously or hereafter filed by or on behalf of Intradigm or subsequently assigned, licensed, or granted to, or acquired by, Intradigm, including without limitation Patents and patent applications based on Intradigm Improvements. Exhibit A lists all the patents and patent applications giving rise to Intradigm Patent Rights as of the date of this Agreement.

"**Intradigm Sublicensed Products**" means Licensed Products (other than the Topical siRNA) that are sold by a Third Party under a sublicense from Acuity for which Acuity would be required to pay a royalty to Intradigm pursuant to Section 7.4 of this Agreement, if such product were sold by Acuity or its Affiliates.

"**Jointly-Owned Intellectual Property**" means developments, discoveries, inventions, ideas, processes, methods, compositions, formulae, techniques, information and data, whether or not patentable, conceived, developed or reduced to practice jointly by one or more employees of Acuity on the one hand and one or more employees of Intradigm on the other hand in connection with the research and development activities performed pursuant to this Agreement which are not Intradigm Improvements or Acuity Improvements.

"Launch" means the date of first commercial shipment of the Topical siRNA by Acuity, its Affiliates, distributors, or sublicensees to Third Party customers in the United States or any foreign country after receipt of Regulatory Approval for the Topical siRNA from the FDA or other relevant Agency, as may be necessary in such country.

"**Licensed Products**" means products whose manufacture, use or sale would, but for the existence of this Agreement, infringe a valid claim of the Intradigm Patent Rights.

"NDA" means a "new drug application," as defined in the Act and applicable FDA rules and regulations, including an application of the type described in section 505(b)(2) of the Act.

"Net Sales" means the total gross proceeds to Acuity on sales to Third Parties representing sales actually collected by Acuity and its Affiliates, less deductions for the following to the extent actually paid or allowed with respect to the such sales:

(a) sales and excise taxes and duties (including import duties) paid or allowed by a selling party and any other governmental charges imposed upon the manufacture or sale, after giving effect to any rebates or refunds relating to such taxes or duties received by Acuity;

(b) rebates and chargebacks (including rebates to social and welfare systems) actually paid;

(c) allowances, chargebacks, and credits to Third Parties on account of rejected, damaged, outdated, returned, withdrawn, or recalled product or on account of retroactive price reductions affecting such product; and

(d) amounts paid to Third Parties on account of rebate payments, including Medicaid rebates.

Taxes, the legal incidence of which is on the purchaser and separately shown on Acuity's or its Affiliates' invoices, and transportation, insurance and postage charges, if prepaid by Acuity or its Affiliates and billed on Acuity's or its Affiliates' invoices as a separate item, shall not be considered a component of Net Sales. Components of Net Sales shall be determined in the ordinary course of business in accordance with Acuity's historical practice and using the accrual method of accounting in accordance with GAAP.

The supply of a product as commercial samples or for use in clinical trials or studies shall not be included within the computation of Net Sales.

Where (i) a product is sold by Acuity or an Affiliate as one of a number of items without a separate price; or (ii) the consideration for a product shall include any non-cash element; or (iii) the product is transferred by Acuity or an Affiliate in any manner other than an invoiced sale, the Net Sales price applicable to any such transaction shall be deemed to be Acuity's average Net Sales price for the applicable quantity of a product to the relevant class of customers at that time.

"**Net Sublicense Payments**" means (a) cash payments made to Acuity in consideration of the sublicense; and (b) the fair market value of any non-cash consideration received by Acuity from a sublicense in consideration of the sublicense other than; provided, however that the following shall not be included in the calculation of Net Sublicense Payments (i) reasonable amounts received in exchange for equity investments in Acuity by a sublicensee, (ii) sponsored research funding paid to Acuity by a sublicensee in a bona fide transaction for future research to be performed by Acuity; (iii) payments for consulting services actually performed by Acuity in a bona fide transaction at arms length rates; and (iv) intellectual property rights received by Acuity from a sublicensee, including, but not limited to, licenses or sublicenses to intellectual property rights, covenants not to compete against Acuity, or agreements not to assert claims against Acuity.

"**Non-Critical Field of Use**" means the treatment of any and all ophthalmic disease, other than those included in the Critical Field of Use.

"Patents" means all valid claims in all patent applications, and all foreign patents and patent applications based thereon, including any continuations, divisionals, continuations-in-part, extensions, reissues and re-examinations of any of the foregoing and all patents issuing from any of the foregoing applications.

"**Product Success Criteria**" means, with respect to the Topical siRNA, those criteria agreed between the Parties and to be set forth in the Research and Development Plan.

"Regulatory Approval" means the Topical siRNA license or marketing approval necessary as a prerequisite for marketing the Topical siRNA in the United States or any foreign country.

"Research and Development Plan" means the development program for the Topical siRNA as described in Section 4.1 hereof which shall be agreed upon by the Parties within 30 days of the date of this Agreement.

"Technical Information" means all techniques and data and other know-how and technical information, including inventions (including patentable inventions), practices, methods, concepts, know-how, trade secrets, documents, computer data, source code, apparatus, clinical and regulatory strategies and data, test data, analytical and quality control data, manufacturing data or descriptions, development information, drawings, specifications, designs, plans, proposals and technical data and manuals and all other proprietary information concerning the development, manufacture, production, quality control, storage, distribution and sale of Licensed Products or the Topical siRNA.

"Third Party" means any entity other than Intradigm or Acuity or their Affiliates.

ARTICLE II
OWNERSHIP OF INTELLECTUAL PROPERTY; LICENSE GRANTS

2.1. Ownership of Inventions.

(a) Except as provided in this Article II, Intradigm shall own all right, title, and interest in and to the Intradigm Intellectual Property and Acuity shall assign any rights it may have in such Intradigm Improvements to Intradigm. Acuity shall own all right, title, and interest in and to the Acuity Intellectual Property and Intradigm shall assign any rights it may have in such Acuity Improvements to Acuity.

(b) Any Intradigm Improvements conceived or reduced to practice during the Term shall become the property of Intradigm, whether conceived or reduced to practice by or on behalf of Acuity and Acuity shall assign any rights it may have in such Intradigm Improvements to Intradigm.

(c) Any Acuity Improvements conceived or reduced to practice during the Term shall become the property of Acuity, whether conceived or reduced to practice by or on behalf of Intradigm and Intradigm shall assign any rights it may have in such Acuity Improvements to Acuity.

(d) Jointly-Owned Intellectual Property shall be owned jointly by Acuity and Intradigm.

2.2. License Grants to Acuity.

(a) Intradigm hereby grants to Acuity, and Acuity hereby accepts from Intradigm, a sole and exclusive (even as to Intradigm) irrevocable right and license, including the right to sublicense, under and to Intradigm Intellectual Property to make, have made, use, sell, offer for sale, import or otherwise commercialize Licensed Products in the Critical Field of Use.

(b) Intradigm hereby grants to Acuity, and Acuity hereby accepts from Intradigm, a sole and exclusive (even as to Intradigm) irrevocable right and license, including the right to sublicense, under and to Jointly-Owned Intellectual Property to make, have made, use, sell, offer for sale, import or otherwise commercialize Topical siRNA and Licensed Products in the Critical Field of Use and the Non-Critical Field of Use.

2.3. Revocable License Grant to Acuity.

(a) Intradigm hereby grants to Acuity, and Acuity hereby accepts from Intradigm, a sole and exclusive (even as to Intradigm), revocable in part (pursuant only to Section 2.3(b) and (c)) right and license, including the right to sublicense, under and to Intradigm Intellectual Property to make, have made, use, sell, offer for sale, import or otherwise commercialize Licensed Products in the Non-Critical Field of Use.

(b) After February 1, 2007, Intradigm may notify Acuity that Intradigm intends (by itself or with a partner) to commercialize a therapeutic in the Non-Critical Field of Use which is not then being pursued by Acuity (the "**Optioned Therapeutic**"). Intradigm shall be required to include with such notification sufficient documentation to demonstrate to Acuity (through means reasonably acceptable to Acuity) that Intradigm is financially and technologically capable of commercializing the Optioned Therapeutic.

(i) Upon receipt of such notification and upon Acuity's acknowledgment (which shall not be unreasonably withheld) that Intradigm is capable of such commercialization, Acuity shall have 120 days from such notification to provide Intradigm with a development plan demonstrating Acuity's financial and technical ability (including Acuity's ownership of, or ability to obtain a license to, intellectual property which is required to commercialize the Optioned Therapeutic) and intent to commercialize the Optioned Therapeutic.

(ii) At this time, if Acuity desires to commercialize the Optioned Therapeutic, Acuity will enter into a binding agreement with Intradigm that requires Acuity to expend a mutually agreed upon amount of capital to commercialize the Optioned Therapeutic over an agreed upon time period.

(iii) If Acuity (A) fails to notify Intradigm during this 120-day period of Acuity's intent to, and reasonably demonstrates its financial and technological ability to, commercialize the Optioned Therapeutic or (B) Acuity materially breaches the agreement described in Section 2.3(b)(ii), Intradigm shall be free to pursue commercialization of the Optioned Therapeutic and the license granted by Intradigm to Acuity in Section 2.2(a) shall be revoked to the extent **and only to the extent** necessary for Intradigm to commercialize the Optioned Therapeutic.

2.4. Revocable License Grant to Intradigm.

(a) Acuity hereby grants to Intradigm, and Intradigm hereby accepts from Acuity, a sole and exclusive (even as to Acuity), revocable (pursuant only to Section 2.4(b)), royalty free, right and license, including the right to sublicense, under and to Intradigm Intellectual Property to make, have made, use, sell, offer for sale, import or otherwise commercialize Licensed Products in the Excluded Field of Use in the Excluded Territory.

(b) If Intradigm fails to enter into a binding agreement to develop therapeutic products for the Excluded Field of Use in the Excluded Territory by December 31, 2005, the license granted by Acuity to Intradigm in Section 2.4(a) shall be terminated without any further action by Acuity or Intradigm.

2.5. Maintenance of Records. Each Party shall maintain full and accurate records concerning their activities under this Agreement for the purpose of documenting any intellectual property developed hereunder. Such records shall be maintained for the later of either three (3) years after the end of the Term or for the pendency of any patent application covering any Jointly-Owned Intellectual Property.

ARTICLE III
OVERVIEW OF COLLABORATION

3.1. Scope of Collaboration. The Parties shall work together to research and develop the Topical siRNA. All research and development work shall be conducted in accordance with a Research and Development Plan to be agreed upon by Acuity and Intradigm within thirty (30) days of the date of this Agreement (the "**Research and Development Plan**").

3.2. Additional Collaboration. The Parties shall exercise good-faith negotiations to enter into a separate collaboration aimed at the further development and commercialization of one or more therapeutics encompassing or employing an siRNA that is deliverable to the posterior pole of the eye which may be administered by systemic application for pharmaceutical use in humans (the "**Systemic siRNA**"). The financial terms of the Systemic siRNA collaboration shall be consistent with and substantially similar to the provisions of Sections 7.1, 7.3, 7.4, 7.5 and 7.6(a) of this Agreement, after taking into account and considering the relevant market for the Systemic siRNA and its expected commercial success.

3.3. Recordkeeping. Each Party shall record, to the extent practical, all Technical Information relating to its research and development activities under the Research and Development Plan in written form, which writing shall be consistent with standard practices of each Party and what is normal and customary in the pharmaceutical industry in the United States or as may be required by applicable law or regulation. All such written records of the Parties shall be maintained in a form sufficient to satisfy all Agencies.

ARTICLE IV
RESEARCH AND DEVELOPMENT PROGRAM

4.1. Research and Development Plan. The Research and Development Plan for the Topical siRNA, including tasks, allocation of responsibilities, estimated development timelines, and estimated development budgets, will be mutually agreed upon by Acuity and Intradigm within thirty (30) days of the date of this Agreement. The Research and Development Plan will also include the Product Success Criteria which will govern Acuity's obligation to commercialize the Topical siRNA. The Parties may periodically modify the Research and Development Plan, within the scope of and in a manner consistent with this Agreement, further detail the responsibilities of each Party within the general scope of responsibilities set forth herein, each in accordance with Section 4.4. In the event that an estimated development timeline will not be met, the Party with responsibility for meeting that timeline shall notify the other Party and the Parties shall work together in good faith to bring the project back on schedule.

4.2. Joint Development Committee.

(b) The Development Program and all pre-clinical testing of the Topical siRNA shall be conducted under the direction of a joint development committee (the "**JDC**"). The JDC shall be composed of two (2) named representatives of Acuity and two (2) named representatives of Intradigm. The named representatives shall designate one member to serve as chairperson of the JDC. Each Party will identify its representatives to the JDC within

five (5) days after the date of this Agreement and each Party shall have the right to replace its representatives at any time in its sole discretion after giving notice to the other Party.

(c) The purposes of the JDC shall be to review, direct, supervise and coordinate all operational and scientific aspects of the development of the Topical siRNA and all pre-clinical testing of the Topical siRNA (the "**Development Program**"). As part of its responsibilities, the JDC shall (i) within thirty (30) days of the Effective Date, finalize the terms of the Research and Development Plan, (ii) review the development of Intradigm under the Development Program, (iii) monitor the progress of the Development Program and evaluate the work performed and the results obtained in relation to the goals of the Development Program, (iv) approve any necessary or desirable modifications to, the Development Program and the Research and Development Plan, and (v) such other functions to which the Parties agree. The Party hosting each meeting of the JDC promptly shall prepare and deliver to the other Party within fifteen (15) business days after the date of such meeting, minutes of such meeting setting forth all decisions of the JDC relating to the Development Program in form and content reasonably acceptable to the other Party.

(d) The JDC shall meet at least twice each quarter until the Development Program is completed (the "**Collaboration Term**"), at such times and places as agreed to by Intradigm and Acuity. The JDC and any of its members may meet or attend meetings by telephone or video conference. The JDC will communicate regularly by telephone, facsimile and video conference. Meetings and telephone and video conferences of the JDC may be attended by such other directors, officers, employees, consultants and other agents of Intradigm and Acuity as the Parties from time to time reasonably agree. Intradigm and Acuity will bear their own costs in attending such meetings.

(e) The JDC will review the characteristics of the compounds identified under the Development Program, and the JDC will select the final compound or compounds which will be used for clinical testing.

(f) All final decisions of the JDC shall be made by majority vote of all of the members.

4.3. Joint Obligations.

(a) Each Party agrees to commit the qualified and experienced personnel, facilities, equipment, expertise and other resources necessary to perform its obligations under this Agreement and the Research and Development Plan.

(b) Except as set forth in Section 4.4, each Party will fund its own costs and expenses in the performance of its research and development obligations provided pursuant to this Agreement and the Research and Development Plan.

(b) The Parties shall keep each other fully informed of the status of the development of the Topical siRNA including, without limitation, providing written reports as requested throughout the performance of the Research and Development Plan, stating in reasonable detail all efforts made and in process, and all significant progress achieved.

(c) The Parties will each designate a primary project contact with respect to the Topical siRNA throughout the performance of the Research and Development Plan.

4.4. Intradigm Obligations.

(a) Intradigm shall use commercially reasonable efforts to diligently perform its obligations under this Agreement, including, without limitation, those to be set forth in the Research and Development Plan, all in accordance with all applicable laws, ordinances, rules, regulations, orders, licenses and other requirements now or hereafter in effect.

(b) Intradigm shall be required to allocate one and one-half (1.5) FTEs (and no more) during the term of the Collaboration for the areas of activity set forth in the Research and Development Plan.

(c) Intradigm shall make available to Acuity all Intradigm Intellectual Property and Technical Information and assistance as may reasonably be necessary for Acuity's development, submission for applicable Regulatory Approval, and commercialization of the Topical siRNA, including formulation and process development, development of stability indicating methods (including methods for dissolution, assay and stability), and achievement of stability under accelerated stability conditions for two months or under ambient conditions for six months, stability data, methods validation, formulation trials, in-process and finished Products specifications, Product development reports for the Topical siRNA, and identification and sourcing of any excipients used in the formulation of the Topical siRNA, all as more particularly described herein and in the Research and Development Plan.

(d) Intradigm shall maintain records in sufficient detail and otherwise in accordance with good laboratory practices or current good manufacturing practices, as the case may be, and as are required to properly reflect, and will document in a manner appropriate for purposes of supporting any Agency filings, and pre-approval inspections, all work done and results achieved by Intradigm in the performance of the Research and Development Plan (including all data in a form required under any applicable governmental regulations). Subject to the confidentiality provisions of Article X hereof, Intradigm shall provide Acuity with copies of all such records relating to the Topical siRNA.

4.5. Acuity Obligations.

(a) Acuity shall use Commercially Reasonable Efforts to diligently perform its obligations under this Agreement, including, without limitation, those set forth in the Research and Development Plan, all in accordance with all applicable laws, ordinances, rules, regulations, orders, licenses and other requirements now or hereafter in effect.

(b) In consideration for Intradigm's performance of its obligations under this Agreement and the Research and Development Plan, Acuity shall pay Intradigm $180,000 per year per FTE employed by Intradigm pursuant to Section 4.6(b).

(c) Acuity shall maintain records in sufficient detail and otherwise in accordance with good laboratory practices, good clinical practices, or current good

manufacturing practices, as the case may be, and as are required to properly reflect, and will document all work done and results achieved in the performance of the Research and Development Plan including all records of any Clinical Trials. Subject to the confidentiality provisions of Article IX hereof, Acuity shall provide Intradigm with the right to inspect such records relating to the Topical siRNA.

(d) Acuity shall keep Intradigm fully informed as to the continuing status of its Clinical Trials and development efforts for the Topical siRNA, including the status of the preparation and filing of any Regulatory Approvals with applicable Agencies as well as the anticipated Launch of the Topical siRNA and the status of the conduct and completion of Clinical Trials. In connection therewith, Acuity shall provide to Intradigm quarterly reports during the Term, stating in reasonable detail all efforts made and in process, and significant progress achieved. In addition, Acuity shall communicate to Intradigm any material issues or problems. Acuity shall include in such reports information concerning the status of the regulatory filings for the Topical siRNA and shall notify Intradigm of the substance of all material written communications with any Agencies relating to the Topical siRNA.

ARTICLE V
HEALTH REGISTRATION OBLIGATION

5.1. Clinical Development; Regulatory Approvals. After the Topical siRNA compound is selected and approved by the JDC, Acuity shall use its Commercially Reasonable Efforts to prepare, file, and prosecute all Agency filings and applications to obtain all Regulatory Approvals for the Topical siRNA in the United States and any foreign country that Acuity chooses in its sole discretion, at Acuity's sole expense. Acuity shall own all right, title, and interest in any FDA or other Regulatory Approvals which are obtained for the Topical siRNA, including all data generated in the course of Clinical Trials and all applications and data submitted to the FDA or other Agency.

5.2. NDA. Acuity shall use Commercially Reasonable Efforts to file an NDA to seek Regulatory Approval to use and sell the Topical siRNA in the United States and any foreign country that Acuity chooses in its sole discretion, at Acuity's sole expense upon satisfaction of the Product Success Criteria.

5.3. Maintenance of Regulatory Approvals. Acuity shall use Commercially Reasonable Efforts to maintain the Regulatory Approvals for use, sale and marketing of Topical siRNA in the United States and any foreign country that Acuity chooses in its sole discretion, at Acuity's sole expense.

5.4. Intradigm Assistance. Intradigm shall provide such assistance to Acuity in obtaining and maintaining Regulatory Approvals in the United States and any foreign country as reasonably requested by Acuity.

ARTICLE VI
MARKETING AND SALE OF THE PRODUCT

6.1. Marketing and Sale of the Topical siRNA.

(a) Upon the Launch of the Topical siRNA, Acuity, either itself or through its Affiliates, or distributors, shall use its Commercially Reasonable Efforts to market, distribute, and sell the Topical siRNA in the United States and any foreign country that Acuity chooses in its sole discretion and shall exercise such diligence in this regard as shall be reasonable in light of the size of the market and potential market for the Topical siRNA and in a manner consistent with which it markets other Acuity products of comparable market size in the particular country.

(b) Acuity shall control and make all decisions regarding the strategy and tactics of marketing, selling, and otherwise commercializing the Topical siRNA, including, without limitation, the method of sales and distribution, organization and management of sales and marketing, packaging and labeling, appointment of distributors pursuant to Section 6.2, and other terms and conditions for such sales and marketing, and shall exercise Commercially Reasonable Efforts in such regard to maximize the economic opportunity for the Topical siRNA.

6.2. Distributors; Sublicensees. Acuity may designate and appoint one or more Third Parties to act as its agent(s) or sublicensees in connection with the marketing, sale and distribution of the Topical siRNA.

6.3. Regulatory Compliance. Acuity shall use Commercially Reasonable Efforts to comply with applicable regulations regarding procedures for reporting to appropriate Agencies, and to report, investigate, issue responses and execute any corrective action plan to post-marketing Topical siRNA complaints/field reports in a timely manner in accordance with applicable regulations.

6.4. No Restrictions on Business. Intradigm agrees that Acuity is in the business of developing, and selling pharmaceutical products and that, subject to Acuity's obligations in Articles IV, V and VI, nothing in this Agreement shall be construed as restricting such business or imposing on Acuity the duty to develop, register, market, and/or to sell the Topical siRNA hereunder to the exclusion of or in preference to any other product or otherwise preclude Acuity from developing or practicing any Acuity Intellectual Property or developing other pharmaceutical products. Correspondingly, except as expressly set forth herein, nothing herein shall be construed as restricting the business of Intradigm.

ARTICLE VII
MILESTONES, FEES, AND ROYALTY PAYMENTS; ACCOUNTING

7.1. Milestones.

(a) In consideration of Intradigm's commitment to provide its research and development obligations as provided herein, including, without limitation, under the Research and Development Plan, Acuity agrees to pay to Intradigm, for the Topical siRNA developed hereunder, the following milestone payments related to the development and

commercialization of one or more Topical siRNA therapeutics. It is also expected that substantially similar milestone payments will be paid in connection with development of each of one ore more Systemic siRNA therapeutics pursuant to a separate collaboration agreement to be negotiated in good faith by the Parties.

Notice of Opening of IND from FDA	$ 100,000
Enrollment of first patient in a Phase II Clinical Trial	$ 500,000
Enrollment of first patient Phase III Clinical Trial	$ 500,000
Phase III Clinical Trial completed successfully	$1,000,000
NDA Approval in the U.S.	$3,000,000

(b) Notwithstanding anything to the contrary contained herein, in the event Acuity exercises its right to terminate the continued development and commercialization of the Topical siRNA pursuant to Sections 12.2 or 12.3 hereof prior to the achievement of any or all of the applicable milestones provided in Section 7.1 relating to the Topical siRNA, Acuity shall be required to make payment to Intradigm only with respect to the milestones which were achieved prior to the Termination Date and no further milestone payments relating to the Topical siRNA shall accrue after the Termination Date.

7.2. License Fee. In consideration for the license granted to Acuity under Section 2.1 of this Agreement, Acuity agrees to pay to Intradigm, the following:

(a) $300,000 within 10 days of the execution of this Agreement; and

(b) $150,000 on December 31, 2005.

7.3. Royalty Payments on Topical siRNA. During the Term, Acuity will pay to Intradigm a royalty on all Net Sales of the Topical siRNA sold by Acuity and its Affiliates equal to four percent (4%) of Net Sales of Topical siRNA. The royalty payments described in Section 7.4 shall not be applicable for sales of the Topical siRNA.

7.4. Royalty Payments on Licensed Products other than Topical siRNA. During the Term, Acuity will pay to Intradigm a royalty equal to the percentage set forth below on all Net Sales of the Licensed Products sold by Acuity and its Affiliates (other than the Topical siRNA), as follows:

(a) Acuity will pay to Intradigm a royalty on all Net Sales of Licensed Products which incorporate a targeted nanoparticle covered by the Intradigm Patent Rights sold by Acuity and its Affiliates equal to two percent (2%) of Net Sales of such Licensed Products.

(b) Acuity will pay to Intradigm a royalty on all Net Sales of Licensed Products which incorporate a nucleic acid carrier covered by the Intradigm Patent Rights sold by Acuity and its Affiliates equal to two percent (2%) of Net Sales of such Licensed Products.

(c) Acuity will pay to Intradigm a royalty on all Net Sales of Licensed Products which incorporate a ligand covered by the Intradigm Patent Rights sold by Acuity and its Affiliates equal to two percent (2%) of Net Sales of such Licensed Products.

(d) Acuity will pay to Intradigm a royalty on all Net Sales of Licensed Products which incorporate an Intradigm Novel siRNA Target covered by the Intradigm Patent Rights sold by Acuity and its Affiliates equal to eight percent (8%) of Net Sales of such Licensed Products.

(e) More than one royalty payment described in this Section 7.4 may be required to be paid (e.g., for Licensed Products which incorporate a ligand covered by the Intradigm Patent Rights and a targeted nanoparticle covered by the Intradigm Patent Rights); *provided however*, that the maximum royalty on any Licensed Product sold by Acuity during the term shall be ten percent (10%) of Net Sales of such Licensed Product.

7.5. Reduction of Royalties. If Acuity is required to pay royalties to Intradigm and one or more Third Parties that, in the aggregate, exceed ten percent (10%) of Net Sales (the "**Total Royalty**") to commercialize a Licensed Product or the Topical siRNA, the royalties due to Intradigm with respect to such Licensed Product or Topical siRNA shall be reduced by one percent (1.0%) for every one percent (1%) that the Total Royalty exceeds ten percent (10%). In no event shall the royalties due to Intradigm be reduced below two percent (2%) pursuant to this Section 7.5.

7.6. Sublicense Fees.

(a) During the Term, Acuity will pay to Intradigm a sublicense fee equal to eight percent (8%) of the Net Sublicense Payments received by Acuity from sublicensees who sell Topical siRNA pursuant to a sublicense agreement with Acuity.

(b) During the Term, Acuity will pay to Intradigm a sublicense fee equal to thirty percent (30%) of the Net Sublicense Payments received by Acuity from sublicensees who sell Intradigm Sublicensed Products (other than Topical siRNA) pursuant to a sublicense agreement with Acuity.

7.7. Withholding Taxes. Acuity shall be entitled to deduct from its payments to Intradigm the amount of any withholding taxes, value-added taxes or other taxes, levies or charges with respect to such amounts payable by Acuity, or any taxes in each case required to be withheld by Acuity to the extent Acuity pays the appropriate governmental authority on behalf of Intradigm such taxes, levies or charges. Acuity shall deliver to Intradigm, upon reasonable request, proof of payment of all such taxes, levies and other charges and appropriate documentation which is necessary to obtain a tax credit, to the extent such tax credit can be obtained.

7.8. Timing of Payments

(a) The milestone payments payable under Section 7.1 will be paid within thirty (30) days of achievement of the applicable milestone.

(b) The Party having primary responsibility for the completion of the applicable milestone shall provide written notice to the other Party not later than fifteen (15) days following the satisfaction of such milestone trigger.

(c) Royalties payable under Section 7.3 or Section 7.4 will be paid not later than sixty (60) days following the end of each Fiscal Quarter, or not later than sixty (60) days from the date that is as soon thereafter as may be practicable in order for Acuity to determine the royalty payable. All payments shall be accompanied by a report in writing showing for the quarter for which such royalty payment applies: (i) the Net Sales of Topical siRNA and Licensed Products for which royalties are required pursuant to Section 7.4 (along with a reasonably detailed description of the calculation thereof); (ii) the royalties payable pursuant to Section 7.3 in United States dollars; and (iii) the withholding taxes, if any, required by law to be deducted with respect to such royalties and the amounts paid to the appropriate governmental authority with respect to such royalties.

7.9. Stock Issuance.

(a) Within thirty (30) days following the Effective Date, Acuity will issue and register in the name of Intradigm a certificate for 250,000 shares of Common Stock of Acuity (the "**Restricted Shares**").

(b) The Restricted Shares shall be grated to Intradigm pursuant to a stock grant agreement between Acuity and Intradigm, the form of which is attached as Exhibit B (the "**Stock Grant Agreement**").

(c) The Restricted Shares will be subject to vesting pursuant to the milestones and time periods described in the Stock Grant Agreement.

(d) Intradigm shall make such written disclosures and representations and warranties, and shall fully cooperate with, Acuity and its counsel as may reasonably be requested by them concerning compliance with any applicable securities laws, rules or regulations applicable to the issuance of such Restricted Shares to Intradigm. The certificates for the Restricted Shares to be issued to Intradigm will contain a legend on the face thereof which will preclude Intradigm from selling or otherwise transferring such shares until the date upon which there is an effective registration statement applicable to such shares which will allow them to be publicly traded.

7.10. No Other Payments. Intradigm acknowledges and agrees that other than the payments provided in this Article VII, and all other payment, indemnity and reimbursement obligations set forth in this Agreement, Intradigm shall not be entitled to any amounts received by Acuity or its Affiliates and sublicensees from the use, commercialization, license or sale of its rights under this Agreement, regardless of the form or manner of payment (including milestones, royalties or other amounts).

7.11. Audit. Acuity shall maintain and shall require its Affiliates and sublicensees to maintain, at their respective offices accurate and complete books and records of the Net Sales of the Topical siRNA, consistent with sound business and accounting practices. Upon the written request Intradigm, but not more than once in any calendar year, Acuity shall permit an independent certified public accounting firm of nationally recognized standing, selected by Intradigm and acceptable to Acuity, to have access during normal business hours to such records of Acuity as shall be necessary to verify the accuracy of the royalty reports provided hereunder for any year ending not more than thirty-six (36) months prior to the date of such request. The accounting firm shall disclose to Intradigm only whether the records are accurate or not and the specific details concerning any discrepancies, and shall provide a copy of its report to Acuity. No other information shall be shared. If the audit of royalties shows an underpayment of royalty payments by Acuity of more than the greater of (i) $25,000 or (ii) five percent (5%), then the expenses of the audit of royalties shall be borne by Acuity; otherwise the expenses of the audit of royalties shall be borne by Intradigm. If such accounting firm concludes that additional royalties were owed or that royalties were overpaid during such period, then Acuity shall pay the additional royalties or Intradigm shall credit or pay Acuity such overpayment within thirty (30) days of the date that such accounting firm's written report is delivered to the parties.

7.12. Confidential Financial Information. Each Party shall treat all financial information of the other Party as Confidential Information of the other Party, and shall retain and shall cause its employees and agents to retain, all such financial information in confidence.

ARTICLE VIII
CERTAIN PROVISIONS REGARDING PATENTS

8.1. Patent Filings, Prosecution and Maintenance of Intradigm Patent Rights.

(a) Intradigm shall have the first right, using in-house or outside legal counsel selected at Intradigm's sole discretion, to prepare, file, prosecute, maintain and extend patent applications and patents concerning all such Intradigm Patent Rights in the United States and any foreign country that Intradigm chooses in its sole discretion, for which Intradigm shall bear the costs relating to such activities. Intradigm shall solicit Acuity's advice and review of the nature and text of any such patent applications in reasonably sufficient time prior to filing thereof, and Intradigm shall take into account Acuity's reasonable comments related thereto. Intradigm and Acuity shall treat all information disclosed to it under this Section 8.1 as Confidential Information (as herein defined).

(b) If Intradigm elects not to file, prosecute or maintain any Intradigm Patent Rights or any ensuing Patents or claims encompassed by any Intradigm Patent Rights in the United States or any foreign country, Intradigm shall give Acuity notice thereof within a reasonable period prior to allowing such patent applications or Patents or such claims encompassed by such patent applications or Patents to lapse or become abandoned or unenforceable, and Acuity shall thereafter have the right, at its sole expense and in the name of Intradigm, to prepare, file, prosecute and maintain patent applications and patents or divisional applications related to such claims encompassed by such patent applications or patents

concerning all such inventions and discoveries in countries of its choice throughout the world. In such case, Intradigm shall assign (or grant Acuity a perpetual irrevocable royalty free license, if an assignment can not be made) to Acuity all of its rights under such patent or patent application in any country in which Acuity prosecutes and/or maintains such patent rights.

8.2. Enforcement of Intradigm Patent Rights.

(a) In the event that a Party learns that any Intradigm Patent Rights necessary for the development, manufacture, use and/or sale of the Topical siRNA are infringed or misappropriated by activities of a Third Party in any country, or are subject to a declaratory judgment action arising from such infringement in such country, such Party shall promptly notify the other Party hereto.

(b) Intradigm shall have the initial right (but not the obligation) to enforce such Intradigm Patent Rights, or defend any declaratory judgment action with respect thereto, at its expense.

(c) In the event that Intradigm fails to initiate a suit to enforce such Intradigm Patent Rights against such a Third Party in any jurisdiction within sixty (60) days after notification of such infringement or decides that does not desire to defend such declaratory judgment action, Acuity may initiate such suit in the name of Intradigm with regard to the applicable Intradigm Patent Rights against such infringement or assume the defense of the declaratory judgment action, at the expense of Acuity. The Party involved in any such claim, suit or proceeding (the "**Enforcing Party**"), shall keep the other Party hereto reasonably informed of the progress of any such claim, suit or proceeding and shall allow the other Party to participate in the action at the other Party's sole cost and expense. Intradigm and Acuity shall recover their respective actual out-of-pocket expenses, or equitable proportions thereof, associated with any litigation or settlement thereof from any recovery made by any Party. Any remaining amounts shall be distributed between the Enforcing Party, with the Enforcing Party receiving 75% of any such net recovery and the other Party 25%.

8.3. Patent Filings, Prosecution and Maintenance of Joint Technology Patent Rights.

(a) Acuity shall have the first right, using in-house or outside legal counsel selected at Acuity at its sole discretion, to prepare, file, prosecute, maintain and extend patent applications and patents concerning all such Jointly Owned Intellectual Property in Rights in the United States and any foreign country that Acuity chooses in its sole discretion, for which Acuity and Intradigm shall equally share the costs relating to such activities. Acuity shall solicit Intradigm's advice and review of the nature and text of any such patent applications in reasonably sufficient time prior to filing thereof, and Acuity shall take into account Intradigm's reasonable comments related thereto. Intradigm and Acuity shall treat all information disclosed to it under this Section 8.3 as Confidential Information (as herein defined).

(b) If Acuity elects not to file, prosecute or maintain any Jointly Owned Intellectual Property or any ensuing Patents or claims encompassed by any Jointly Owned Intellectual Property in the United States or any foreign country, Acuity shall give

Intradigm notice thereof within a reasonable period prior to allowing such patent applications or Patents or such claims encompassed by such patent applications or Patents to lapse or become abandoned or unenforceable, and Intradigm shall thereafter have the right, in the name of Acuity and Intradigm, to prepare, file, prosecute and maintain patent applications and patents or divisional applications related to such claims encompassed by such patent applications or patents concerning all such inventions and discoveries in countries of its choice throughout the world. In such case, Acuity shall either: (i) continue to share equally in the costs of prosecuting or maintaining such patent rights or (ii) assign (or grant to Intradigm a perpetual irrevocable royalty free license, if an assignment can not be made) to Intradigm all of its rights under such patent or patent application in any country in which Intradigm prosecutes and/or maintains such patent rights.

8.4. Injunction and/or Failure to Obtain Third Party License. Without limiting any other remedy that may be available to Acuity under this Agreement, Acuity shall have the right to terminate this Agreement in its entirety or only as to the affected country, immediately upon written notice to Intradigm if at any time during the term of this Agreement: (i) a permanent injunction is issued by a court of competent jurisdiction enjoining Acuity's sale of the Topical siRNA in a country, or (ii) Acuity ceases the sale of the Topical siRNA in a country as a result of a failure of either Party to obtain, upon commercially reasonable terms, a license (or immunity from suit) from a Third Party alleging infringement in such country.

ARTICLE IX
CONFIDENTIALITY

9.1. Confidentiality and Non-Use Obligations. (a) During the Term of this Agreement and for five (5) years thereafter without regard to the means of termination, neither Acuity nor Intradigm shall use, for any purpose other than the purposes of this Agreement, reveal or disclose to any Third Party information and materials disclosed by the other Party (whether prior to or during the Term of this Agreement), and marked as confidential or for which the receiving Party knows or has reason to know are or contain trade secrets or other proprietary information of the other Party (the "Confidential Information") without first obtaining the written consent of the other Party.

(b) The Parties shall take all reasonable precautions to prevent the use or disclosure of such Confidential Information without first obtaining the written consent of the other Party, except (i) as may be required for securing Regulatory Approval, including pricing approval in the United States and any foreign country, or as may otherwise be required to be disclosed to an Agency in the United States and any foreign country; or (ii) as required in connection with any filings made by the Securities and Exchange Commission or similar non-U.S. regulatory authorities or by the disclosure policies of a major stock exchange. Each Party agrees that prior to the release or dissemination of the other Party's Confidential Information to any Affiliate or sublicensee, such Party shall cause the person to whom such Confidential Information is to be released to be bound by a confidentiality agreement providing for a level of protection of such Confidential Information at least equivalent to the terms of this Article X.

(c) These restrictions upon disclosure and use of Confidential Information shall not apply to any specific portion of Confidential Information which:

(i) is Confidential Information that can be demonstrated by the written records of the recipient to have already been in the possession of the recipient free of any restrictions as to its use or disclosure at the time of disclosure by the other Party;

(ii) is or later becomes available to the public, as evidenced by documents which were generally published, other than by the fault of the recipient; or

(iii) is received from a Third Party having legitimate possession thereof and the independent legal right to make such disclosure and such Third Party does not place any restriction as to the use or disclosure on the recipient.

(d) Any patent applications and information therein filed or to be filed by either Party shall be deemed (i) to be Confidential Information of that Party subject to the provisions of this Article IX and (ii) to have been disclosed in confidence to the other Party.

(e) Notwithstanding the foregoing, the recipient may disclose any Confidential Information to the extent required by an order of any court or other governmental authority having competent jurisdiction, but only after the other Party is (i) notified in writing and provided with a copy of such order; and (ii) given an opportunity to prevent such disclosure or obtain reasonable protection for such Confidential Information. In any such event, the recipient shall cooperate fully with other Party in connection with obtaining any protective order or other appropriate remedy to prevent disclosure of Confidential Information.

9.2. Press Releases and Public Announcements. Neither Party to this Agreement shall issue any press release or other publicity materials, or make any public presentation with respect to the terms or conditions of this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed). The restrictions provided in this Section 9.2 shall not apply to disclosures deemed by Acuity in its discretion to be required by law or regulation, including as may be required in connection with any filings made with the Securities and Exchange Commission or any similar non-U.S. regulatory authority, or by the disclosure policies of the Nasdaq Stock Market, Inc.

ARTICLE X
REPRESENTATIONS AND WARRANTIES

10.1. Legal and Governmental Compliance. Each Party shall comply with all laws, rules and regulations applicable to the activities undertaken by such Party hereunder.

10.2. Intradigm Representations and Warranties. Intradigm represents and warrants to Acuity that the following are true and correct as of the date hereof:

(a) Intradigm is a Delaware corporation duly organized, validly existing, and in good standing under the laws of Delaware and has full corporate power to own its properties and conduct the business presently being conducted by it, and is duly qualified to do business in, and is in good standing under, the laws of all jurisdictions in which its activities or assets require such status, except in any case where the failure to be so qualified and in good standing would not be material.

(b) Intradigm has full corporate right, power and authority to perform its obligations pursuant to this Agreement, and this Agreement and the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of Intradigm. This Agreement has been duly and validly executed by Intradigm. Upon execution and delivery of this Agreement, it will be the valid and binding obligation of Intradigm, enforceable in accordance with its terms, subject to equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditor's right and remedies generally.

(c) The execution, delivery and performance of this Agreement does not, and the consummation of the transactions herein contemplated will not violate any law, rule, regulation, order, judgment or decree binding on Intradigm, or result in a breach of any term of the certificate of incorporation or by-laws of Intradigm or any contract, agreement or other instrument to which Intradigm is a party, except in each case to an extent not material.

(d) Intradigm is the sole owner of the entire right, title and interest in and to the Intradigm Patent Rights and no other Person (including any government) has any license, claim or other right or interest in or to the Intradigm Patent Rights as of the Effective Date.

(e) To Intradigm's actual knowledge, the use of the Intradigm Intellectual Property in the development, manufacture and sale of the License Products or the Topical siRNA will not infringe, misappropriate or otherwise conflict with any intellectual property or other rights of any Third Party as of the Effective Date.

(f) Intradigm is not aware of any infringement of the Intradigm Patent Rights as of the Effective Date.

(g) There are no judicial, arbitral, regulatory or administrative proceedings or investigations, claims, actions or suits relating to the Intradigm Patent Rights pending against or, to Intradigm's knowledge, threatened against Intradigm or its Affiliates in any court or by or before any governmental body or agency in the United States or any foreign country.

10.3. Representations and Warranties of Acuity. Acuity represents and warrants to Intradigm that the following are true and correct as of the date hereof:

(a) Acuity is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full corporate power to own its properties and conduct the business presently being conducted by it, and is duly qualified to do business in, and is in good standing under, the laws of all states in which its activities or assets require such status, except in any case where the failure to be so qualified and in good standing would not be material.

(b) Acuity has full corporate right, power and authority to perform its obligations pursuant to this Agreement, and this Agreement and the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action on the part of Acuity. This Agreement has been duly and validly executed by Acuity. Upon execution and

delivery of this Agreement, it will be the valid and binding obligation of Acuity enforceable in accordance with its terms, subject to equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditor's rights and remedies generally.

(c) The execution, delivery and performance of this Agreement does not, and the consummation of the transactions therein contemplated will not violate any law, rule, regulation, order, judgment or decree binding on Acuity or result in a breach of any term of the certificate of incorporation or by-laws of Acuity or any contract, agreement or other instrument to which Acuity is a party, except in each case to an extent not material. No authorization is required by Acuity for the execution, delivery, or performance of this Agreement by Acuity, except in each case to an extent not material.

10.4. Limitation on Warranties. Except as expressly provided in this Agreement, neither Party makes any representation or warranty to the other, whether express or implied, either in fact or by operation of law, by statute or otherwise, and both Parties specifically disclaim any and all implied or statutory warranties, including, without limitation, any warranty of merchantability or warranty of fitness for a particular purpose. In addition, each Party understands and agrees that neither Party warrants or commits that the Topical siRNA will be successfully developed, be submitted for applicable Regulatory Approval (except as expressly required under this Agreement), receive applicable Regulatory Approval or be successfully marketed or commercialized. Without limiting the indemnity obligations set forth in Article XII for the items described therein, neither Party shall have liability or responsibility to the other Party for any such failure in the research and development, Agency approval, manufacturing, marketing or sales efforts, except to the extent such failure results from the Party's willful misconduct or gross negligence.

ARTICLE XI
INDEMNIFICATION; INSURANCE

11.1. Indemnification.

(a) *Acuity Indemnification*. Acuity agrees to indemnify and hold forever harmless Intradigm and its Affiliates and each of their agents, directors, officers and employees from and against any loss, damage, action, proceeding, expense, liability, physical or emotional injury or death, or loss of service or consortium, including reasonable attorney's fees ("Loss") arising from or in connection with (i) the research, development, manufacture, use, offer for sale, sale or importation by Acuity or its Affiliates of Licensed Products or Topical siRNA, except for any Loss for which Intradigm has agreed to indemnify Acuity pursuant to Section 11.1(b) below; (ii) the breach or inaccuracy of any representations, warranties or covenants made by Acuity in this Agreement; and (iii) the gross negligence or willful misconduct of Acuity or its Affiliates or any of their agents, directors officers or employees.

(b) *Intradigm Indemnification*. Intradigm agrees to indemnify and hold forever harmless Acuity and its Affiliates and each of their agents, directors, officers, and employees from and against any Loss arising from or in connection with: (i) Intradigm's or its Affiliates' research and development activities in connection with the Topical siRNA or the activities of any Intradigm personnel in connection with the research, development, manufacture,

use, sale, storage or handling of the Topical siRNA, except for any Loss for which Acuity has agreed to indemnify Intradigm pursuant to Section 11.1(a) above; (ii) the breach or inaccuracy of any representations, warranties or covenants made by Intradigm in this Agreement, (iii) the gross negligence or willful misconduct of Intradigm or its Affiliates or any of their agents, directors, officers or employees; and (iv) the research, development, manufacture, use, offer for sale, sale or importation of Licensed Products by Intradigm or any of its Affiliates or any of their distributors, sublicensees or agents.

11.2. Procedure. A Party seeking indemnity hereunder (an "**Indemnified Party**") shall promptly notify the other Party (the "**Indemnifying Party**") upon being notified or otherwise made aware of a suit, action or claim; provided that failure to provide such notice shall not affect the obligation of the Indemnifying Party to indemnify except to the extent that the Indemnifying Party is materially prejudiced thereby. The Indemnifying Party shall defend and control any proceedings, and the Indemnified Party shall be permitted to participate at its own expense, unless there shall be a conflict of interest which would prevent representation by joint counsel, in which event the Indemnifying Party shall pay for the Indemnified Party's separate counsel pursuant to Section 11.1 above. The Indemnifying Party may not settle the suit or otherwise consent to any judgment in such suit without the written consent of the Indemnified Party (such consent not to be unreasonably withheld or delayed). The Parties shall cooperate in the defense of any Third Party claim.

11.3. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES OR EXPENSES, INCLUDING DAMAGES FOR LOST PROFITS, LOSS OF OPPORTUNITY OR USE OF ANY KIND, SUFFERED BY THE OTHER PARTY, WHETHER IN CONTRACT, TORT OR OTHERWISE.

11.4. Insurance.

(a) During the term of this Agreement and for a period of five (5) years after its expiration or earlier termination, each Party shall obtain, at its sole cost and expense, liability insurance applicable to its performance under this Agreement that meets the following requirements:

(b) the insurance shall insure such Party against all liability related to its activities relating to the development, manufacture, use or sale of Products (whether such Party's liability arises from its own conduct or by virtue of its participation in this Agreement), including liability for bodily injury, property damage, wrongful death, and any contractual indemnity obligations imposed by this Agreement; and

(c) the insurance shall be in amounts that are reasonable and customary in the United States in the pharmaceutical industry, but in no event shall liability insurance relating to manufacture, use, sale or distribution of a marketed Product maintained by such Party cover less than (a) two million dollars ($2,000,000) per occurrence (or claim) and an annual aggregate of two million dollars ($2,000,000) during clinical testing of Licensed Products and Topical siRNA and (b) a commercially reasonable amount after completion of clinical testing. All such policies shall include a contractual endorsement naming the other Party to this

Agreement as an additional insured and require the insurance carriers to provide such other Party with no less than thirty (30) days written notice of any change in the terms or coverage of the policies or their cancellation.

ARTICLE XII
TERM; TERMINATION

12.1. Term. This Agreement shall take effect as of the date hereof and shall continue in effect for twenty years unless earlier terminated in accordance with the provisions of this Article XII (such date being referred to as the "**Termination Date**").

12.2. Acuity Product Specific Termination.

(a) Acuity may terminate its obligations under Article IV, Article V, Section 7.1 and Section 7.3, in whole or in part on a country by country basis, if Acuity shall have reasonably determined to terminate or discontinue the clinical testing, regulatory approval or commercialization of the Topical siRNA.

(b) Upon such termination, the Parties' rights and obligations under this Agreement (exclusive of the confidentiality obligations of Article IX and indemnity obligations of Article XI hereof, each of which shall survive the termination) shall terminate as to the countries so terminated and be of no further force or effect as to the countries so terminated.

12.3. Notification of Termination by Acuity. Acuity shall exercise its right of termination by the provision of written notice to Intradigm within sixty (60) days of the occurrence of any of the events set forth in Section 12.2, such notice to contain the details supporting such termination.

12.4. Termination of Agreement by the Parties. This Agreement may be terminated:

(a) By mutual written consent of each of Intradigm and Acuity; or

(b) Upon written notice by a Party if (i) the other Party shall have been dissolved, ceased active business operations or liquidated, unless such dissolution, cessation or liquidation results from reorganization, acquisition, merger or similar event, or (ii) bankruptcy or insolvency proceedings, including any proceeding under Title 11 of the U.S. Code, have been brought by or against the other Party and, in the event such a proceeding has been brought against the other Party, remains undismissed for a period of sixty (60) days, or an assignment has been made for the benefit of such Party's creditors or a receiver of such Party's assets has been appointed (a "**Bankruptcy Event**"); or

(c) By either Acuity or Intradigm, upon ninety (90) days prior written notice, if the other Party is in material default, and fails to cure such breach within ninety (90) days following receipt of written notice from the non-breaching Party specifying the breach to be cured.

12.5. Consequences of Termination.

(a) Upon termination of this Agreement in whole each Party shall return to the other all relevant records and materials in its possession or control containing confidential information of the other Party.

(b) At the time of any termination of this Agreement under Section 12.4 other than termination by Intradigm under 12.4(c), if the Topical siRNA has been Launched in the affected country prior to such termination, then Acuity shall have the option to maintain in effect the license granted hereunder respecting the Topical siRNA, subject to Acuity's obligation to pay royalties under Section 7.3 above.

12.6. Surviving Rights. Termination of this Agreement for any reason shall be without prejudice to:

(a) The rights and obligations of the parties provided in Section 2.1, Articles IX and XI hereof, and the representations and warranties provided in Article X, all of which shall survive such termination;

(b) Any other rights, obligations or liabilities which shall have accrued to the benefit of either Party prior to such termination (including without limitation Acuity's obligation to pay all milestone and royalty payments which shall have accrued hereunder up to and including the effective date of such termination), all of which shall survive such termination; and

(c) Any other rights of remedies provided at law or in equity which either party may otherwise have against the other.

ARTICLE XIII
MISCELLANEOUS

13.1. Force Majeure. Neither Party shall lose any rights hereunder or be liable to the other Party for damages or loss on account of failure of performance by the defaulting Party if the failure is occasioned by government action, war, fire, explosion, flood, strike, lockout, embargo, act of God, or any other similar cause beyond the reasonable control of the defaulting Party, provided that the Party claiming force majeure has exerted all reasonable efforts to avoid or remedy such force majeure and given prompt notice to the other Party.

13.2. Notices. All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be delivered by hand, sent via overnight courier, sent by facsimile, or mailed by first class certified or registered mail, return receipt requested, postage prepaid:

If to Acuity: to
Acuity Pharmaceuticals, Inc.
3701 Market Street
Philadelphia, PA, 19104
Attn: Dale R. Pfost, Ph.D.

With a copy to:
Pepper Hamilton LLP
3000 Two Logan Square
Philadelphia, PA 19103
Attn: Ilan Katz

If to Intradigm: to
Intradigm Corporation
12115 Parklawn Drive, Suite K
Rockville, MD 20852
Attn: John A. Spears, Ph.D.

or to such other person or entity or at such other address as any party shall designate by notice to the other in accordance herewith.

Notices provided in accordance with this Section 13.2 shall be deemed delivered (i) upon personal delivery with signature required, (ii) one Business Day after they have been sent to the recipient by reputable overnight courier service (charges prepaid and signature required) (iii) upon confirmation, answer back received, of successful transmission of a facsimile message containing such notice if sent between 9:00 a.m. and 5:00 p.m., local time of the recipient, on any Business Day, and as of 9:00 a.m. local time of the recipient on the next Business Day if sent at any other time, or (iv) three Business Days after deposit in the mail. The term "Business Day" as used in this Section 13.2 shall mean any day other than Saturday, Sunday or a day on which banking institutions are not required to be open in the State of New Jersey.

13.3. Governing Law; Dispute Resolution.

(a) This Agreement shall be governed by the laws of the State of Delaware, as such laws are applied to contracts entered into and to be performed within such state, as though made and to be fully performed therein without regard to conflicts of law principles thereof. The Parties agree to submit to the personal jurisdiction in any Federal or State court of competent jurisdiction seated in the State of Delaware, and waive any objection as to venue or inconvenience of forum.

(b) The Parties shall initially attempt in good faith to resolve any significant controversy, claim, allegation of a Default or dispute arising out of or relating to this Agreement (hereinafter collectively referred to as a "Dispute") through negotiations between senior executives of Acuity and Intradigm. If the Dispute is not resolved within thirty (30) days (or such other period of time mutually agreed upon by the Parties) of notice of the Dispute, then the Parties agree to submit the Dispute to non-binding mediation on terms and procedures to be mutually agreed to for a period of ninety (90) days. Any mediation proceedings shall be treated as settlement discussions and therefore shall be confidential, and no mediator may testify for either Party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings. Each Party shall bear its own costs and expenses of mediation, and the Parties shall share equally the fees and expenses of the mediator.

(c) If the Dispute is not resolved through negotiations or mediation as set forth above, then either Party may commence litigation; provided, that this Section 13.3 shall not be construed to prevent a Party from seeking injunctive relief without observing the requirements of Section 13.3(b).

13.4. Non-waiver of Rights. Except as specifically provided for herein, the waiver from time to time by any of the Parties of any of their rights or their failure to exercise any remedy shall not operate or be construed as a continuing waiver of same or of any other of such Party's rights or remedies provided in this Agreement.

13.5. No Agency. Neither Party shall by virtue of this Agreement have any power to bind the other to any obligation nor shall this Agreement create any relationship of agency, partnership or joint venture.

13.6. Severability. If any term, covenant, or condition of this Agreement or the application thereof to any Party or circumstance shall, to any extent, be held to be invalid or unenforceable, then (i) subject to clause (ii) of this Section 13.6 the remainder of this Agreement, or the application of such term, covenant or condition other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law and (ii) the Parties hereto covenant and agree to renegotiate any such term, covenant, or application thereof in good faith in order to provide a reasonably acceptable alternative to the term, covenant, or condition of this Agreement or the application thereof that is invalid or unenforceable.

13.7. Entire Agreement. This Agreement, including the exhibits and schedules hereto as in effect from time to time pursuant to the terms hereof, sets forth all the covenants, promises, agreements, warranties, representations, conditions, and understandings between the Parties hereto in the scope of the collaboration, and supersedes and terminates all prior agreements and understanding between the parties under this Agreement. No subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon the Parties hereto unless reduced to writing and signed by the respective authorized officers of the Parties.

13.8. Assignment. No Party shall, without the prior written consent (not to be unreasonably withheld or delayed) of the other Party having been obtained, assign or transfer this Agreement to any Third Party, provided, however, that any Party may assign or transfer this Agreement to any Affiliate, provided that the assigning Party shall guarantee the performance of that Affiliate, or to any successor by merger of such Party, or to the Purchaser of all or substantially all of such assets of its business, without the prior written consent of the other Party hereto. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their successors and permitted assigns.

13.9. Facsimile Execution. This Agreement may be executed in facsimile counterparts each of which is hereby agreed to have the legal binding effect of an original signature. The Parties hereto agree to forward the original signatures by overnight mail to the other Party upon execution.

13.10. License Survival During Bankruptcy. All rights and licenses granted under or pursuant to this Agreement to the Intradigm Intellectual Property are, and shall otherwise be deemed to be, for purposes of Paragraph 365(n) of the U.S. Bankruptcy Code, licenses of rights to "Intellectual Property" as defined under Paragraph 101(35A) of the U.S. Bankruptcy Code. The parties agree that Acuity, as a licensee of such rights under this Agreement, shall retain and may fully exercise all of its rights and elections under the U.S.

Bankruptcy Code, subject to performance by Acuity of its obligations under this Agreement. The parties further agree that, in the event Intradigm elects to terminate this Agreement because of a Bankruptcy Event and Acuity elects to continue the licenses under this Agreement as contemplated by the preceding sentence, then Acuity shall be entitled, upon reasonable request, to have access, in confidence, to such of Intradigm Intellectual Property not already in Acuity's possession, as shall be reasonably necessary to make use of the license rights under this Agreement without participation by Intradigm.

****

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first indicated above.

ACUITY PHARMACEUTICALS, INC.

By: /s/ Dale R. Pfost
Name: Dale R. Pfost
Title: President and Chief Executive Officer

INTRADIGM CORPORATION

By: /s/ John A. Spears
Name: John A. Spears
Title: Chairman and Chief Executive Officer

EXHIBIT 10.13

University *of* Pennsylvania

License Agreement

This Agreement (this "*Agreement*") is between The Trustees of the University of Pennsylvania, a Pennsylvania nonprofit corporation ("*Penn*"), and Acuity Pharmaceuticals, Inc., a Delaware corporation ("*Company*"). This Agreement is being signed on March 31, 2003. This Agreement will become effective on March 31, 2003 (the "*Effective Date*").

BACKGROUND

Penn owns certain intellectual property developed by Dr. Michael J. Tolentino, Mr. Samuel J. Reich and Mr. Enrico M. Surace of Penn's School of Medicine, Department of Ophthalmology, relating to the body of work known as RNA interference (the "*RTS Intellectual Property*"). Penn also owns certain applications for United States letters patent relating to the RTS Intellectual Property. Company desires to obtain an exclusive license under the patent rights to exploit the RTS Intellectual Property. Company also desires to fund further research by Dr. Tolentino and Dr. Jean Bennett and their respective groups under a separate agreement. Penn has determined that the exploitation of the RTS Intellectual Property by Company is in the best interests of Penn and is consistent with its educational and research missions and goal.

Simultaneously with the execution of this Agreement, Penn and Company are executing an exclusive license agreement for certain intellectual property developed by Dr. Alan Gewirtz (together with the RTS Intellectual Property, the "*Intellectual Property*"), also relating to the body of work known as RNA interference (the "*Gewirtz License Agreement*").

In consideration of the mutual obligations contained in this Agreement, and intending to be legally bound, the parties agree as follows:

1. LICENSE

1.1. License Grant. Penn grants to Company an exclusive, world-wide license (the "*License*") to make, have made, use, import, sell and offer for sale Licensed Products during the Term (as such terms may be defined in Sections 1.2 and 6.1). The License includes the right to sublicense as permitted by this Agreement. No other rights or licenses are granted by Penn.

1.2. Related Definitions.

The term "*Licensed Products*" means products that are made, made for, used, imported, sold or offered for sale by Company or its Affiliates or sublicensees and that

either (i) in the absence of this Agreement, would infringe at least one claim of the Penn Patent Rights or (ii) use a process or machine covered by a claim of Penn Patent Rights.

The term "*Sale*" means any bona fide transaction for which consideration is received or expected for the sale, use, lease, transfer or other disposition of a Licensed Product, and a Sale is deemed completed at the time that Company or its Affiliate or sublicensee invoices, ships or receives payment for a Licensed Product, whichever occurs first.

The term "*Penn Patent Rights*" means all patent rights represented by or issuing from: (i) the United States patent applications and/or Penn docket numbers listed in Exhibit A; (ii) any continuation, divisional and re-issue applications of (i); and (ii) any foreign counterparts and extensions of (i) or (ii).

The term "*Affiliate*" means a legal entity that is controlling, controlled by or under common control with Company and that has executed either this Agreement or a written Joinder Agreement agreeing to be bound by all of the terms and conditions of this Agreement. For purposes of this Section 1.2, the word "*control*" means (i) the direct or indirect ownership of more than fifty percent (50%) of the outstanding voting securities of a legal entity, (ii) the right to receive fifty percent (50%) or more of the profits or earnings of a legal entity or (iii) the right to determine the policy decisions of a legal entity.

The term "*Significant Transaction*" shall mean a single transaction or series of related transactions consisting of or resulting in any of the following: (i) an assignment of the License, (ii) an exclusive worldwide sublicense of all or substantially all of the intellectual property rights granted to Company under this Agreement and a non-exclusive or exclusive, in either case, worldwide sublicense of all or substantially all of the intellectual property rights granted to Company under the Gewirtz License Agreement, (iii) an initial public offering of securities by Company or other transaction resulting in either: (a) Company becoming a public company or (b) any of Company's securities being traded on a nationally recognized stock exchange or automated quotation system, (iv) a sale, license or other disposition of all or substantially all of Company's assets, or (v) a reorganization, consolidation or merger of Company, or sale or transfer of the securities of Company, where the holders of Company's outstanding voting securities before the transaction beneficially own less than fifty percent (50%) of the outstanding voting securities, or hold less than fifty percent (50%) of the voting power of the voting securityholders of the surviving entity after the transaction. Notwithstanding anything above to the contrary, a Significant Transaction shall not be deemed to occur as a result of a bona fide, arms-length equity financing for cash in which Company issues securities representing more than fifty percent (50%) of the voting power of its securityholders to venture capital or other similar investors who do not actively manage day-to-day operations of Company.

1.3. Reservation of Rights by Penn. Penn reserves the right to use, and to permit other non-commercial entities to use, the Penn Patent Rights for educational and research purposes only.

1.4. U.S. Government Rights. The parties acknowledge that the United States government retains rights in intellectual property funded under any grant or similar contract with a Federal agency. The License is expressly subject to all applicable United States government rights, including, but not limited to, any applicable requirement that products, which result from such intellectual property and are sold in the United States, must be substantially manufactured in the United States as conditioned by 37 CFR 401.

1.5. Sublicense Conditions. The Company's right to sublicense granted by Penn under the License is subject to each of the following conditions:

(a) In each sublicense agreement, Company will prohibit the sublicensee from further sublicensing and require the sublicensee to comply with the terms and conditions of this Agreement.

(b) Within thirty (30) days after Company enters into a sublicense agreement, Company will deliver to Penn an executed copy of the entire sublicense agreement written in the English language. Penn's receipt of the sublicense agreement, however, will not constitute a waiver of any right of Penn or obligation of Company under this Agreement.

(c) In the event that Company causes or experiences a Trigger Event (as defined in Section 6.4), all payments due to Company and its Affiliates or sublicensees under the sublicense agreement will, upon notice from Penn to such Affiliate or sublicensee, become payable directly to Penn for the account of Company. Upon receipt of any such funds, Penn will remit to Company the amount by which such payments exceed the amounts owed by Company to Penn.

(d) Company's execution of a sublicense agreement will not relieve Company of any of its obligations under this Agreement. Company is primarily liable to Penn for any act or omission of an Affiliate or sublicensee of Company that would be a breach of this Agreement if performed or omitted by Company, and Company will be deemed to be in breach of this Agreement as a result of such act or omission.

2. DILIGENCE

2.1. Development Plan. Company will deliver to Penn, within ninety (90) days after the Effective Date, a copy of an initial development plan for the Penn Patent Rights (the "*Development Plan*"). The purpose of the Development Plan is (a) to demonstrate Company's capability to bring the Penn Patent Rights to commercialization, (b) to project the timeline for completing the necessary tasks, and (c) to measure Company's progress against the projections. Thereafter, Company will deliver to Penn an annual updated Development Plan no later than December 1 of each year during the Term. The Development Plan will include, at a minimum, information to be mutually agreed upon by the parties hereto.

2.2. Company's Efforts. Company will use commercially reasonable efforts to

develop, commercialize, market and sell Licensed Products in a manner consistent with the Development Plan.

2.3. Diligence Events. The Company will use commercially reasonable efforts to achieve each of the diligence events by the applicable completion date listed in the table below for the first product to be commercialized by the Company pursuant to this Agreement or the Gewirtz License Agreement.

DILIGENCE EVENT	COMPLETION DATE
Delivery to Penn of a preliminary business plan	June 30, 2003
Raising at least an aggregate of $5 Million in equity investment capital from qualified investors	December 31, 2004
Filing of IND for first Licensed Product	January 31, 2005
Initiation of Phase II clinical trials for first Licensed Product	December 31, 2007
Initiation of Phase III clinical trials for first Licensed Product	December 31, 2010
First commercial Sale of first Licensed Product	December 31, 2013

3. FEES AND ROYALTIES

3.1. Equity Issuance. In partial consideration of the License, Company will issue to Penn on the Effective Date such number of shares of Common Stock of the Company as will cause Penn to own at least twenty six and eight tenths percent (26.8%) of the capital stock of Company on a fully diluted basis, assuming the exercise, conversion and exchange of all outstanding securities of Company for or into shares of Common Stock. The issuance of equity to Penn will be pursuant to a Stock Purchase Agreement and a Stockholders Agreement between Company and Penn, the forms of which are attached as Exhibits C and D (the "*Equity Documents*").

3.2. Dilution Protection. In partial consideration of the License, through the closing of the equity financing round at which Company has raised cumulatively at least an aggregate of seven hundred and fifty thousand dollars ($750,000) in net proceeds to Company of equity financing from qualified investors, Company will issue to Penn, from time to time and at no additional consideration, such additional number of shares of Common Stock of Company as will cause Penn to continue to hold in the aggregate twenty six and eight tenths percent (26.8%) of the capital stock of Company on a fully diluted basis, assuming the exercise, conversion and exchange of all outstanding securities of Company for or into shares of Common Stock.

3.3. Milestone Payments. In partial consideration of the License, Company will pay to Penn the applicable milestone payment listed in the table below after achievement of each milestone event for the first product commercialized and sold by the Company or its Affiliates pursuant to this Agreement or the Gewirtz License Agreement.

MILESTONE	PAYMENT
Initiation of Phase II clinical trials for first Licensed Product	$ 50,000
Initiation of Phase III clinical trials for first Licensed Product	$ 300,000
First commercial Sale of first Licensed Product	$ 600,000

3.4. Earned Royalties. In partial consideration of the License, Company will pay to Penn a royalty of two percent (2%) of Net Sales of a Licensed Product sold by Company or its Affiliates (but not sublicensees) during each Quarter following the occurrence of a Significant Transaction. In partial consideration of the License, Company will pay to Penn a royalty of one percent (1%) of Net Sales of each Licensed Product sold by sublicensees of the Company (and not the Company or its Affiliates) during each Quarter following the occurrence of a Significant Transaction. The term "*Quarter*" means each three-month period beginning on January 1, April 1, July 1 and October 1. The term "*Net Sales*" means the consideration received from, or fair market value attributable to, each Sale of a Licensed Product, less Qualifying Costs directly attributable to a Sale and borne by Company or its Affiliates or sublicensees. For purposes of determining Net Sales, the words "fair market value" mean the cash consideration that Company or its Affiliates or its sublicensees would realize from an unrelated buyer in an arms length sale of an identical item sold in the same quantity and at the time and place of the transaction. The term "*Qualifying Costs*" means: (a) customary discounts in the trade for quantity purchased, prompt payment or wholesalers and distributors; (b) credits or refunds for claims or returns that do not exceed the original invoice amount; (c) prepaid outbound transportation expenses and transportation insurance premiums; and (d) sales and use taxes and other fees imposed by a governmental agency.

3.5. Reduction of Royalty. If Company is required to pay royalties to Penn and third parties that, in the aggregate, exceed four percent (4%) of Net Sales (the "*Total Royalty*") to commercialize a Licensed Product, the royalties due to Penn for such time, with respect to such a Licensed Product shall be reduced by two tenths of one percent (0.2%) for every one percent (1%) the aggregate royalty exceeds four percent (4%) of Net Sales. To clarify, Company shall pay to Penn a royalty of 2% — (0.2*(Total Royalty — 4%)) of the Net Sales. In no event shall the royalties due to Penn be reduced below one percent (1%) of Net Sales.

3.6. Sublicense Fees. Except as otherwise provided below, in partial consideration of the License, Company will pay to Penn a sublicense fee of two percent (2%) of all payments and the fair value of all other consideration of any kind received by Company from sublicensees.

Notwithstanding anything above to the contrary, no sublicense fee under this Section 3.6 will be due to Penn with respect to any of the following consideration received by Company: (i) consideration received by the Company from sublicensees before the earlier of (a) the third anniversary of the Effective Date and (b) the occurrence of a Significant Transaction as long as such fees are reinvested in the development of the Intellectual Property, (ii) royalties paid to Company by a sublicensee based upon sales or net sales of Licensed Products by the sublicensee; (iii) equity investments in Company by a sublicensee, up to the amount of the fair market value of the equity purchased on the date of the investment as reasonably determined under the circumstances; (iv) sponsored research funding paid to Company by a sublicensee in a bona fide transaction for future

research to be performed by Company; (v) payments for consulting services actually performed by Company in a bona fide transaction at arms length rates; and (vi) intellectual property rights received by Company from a sublicensee, including, but not limited to, licenses or sublicenses to intellectual property rights, covenants not to compete against Company, or agreements not to assert claims against Company.

3.7. Non-Assertion and Non-Duplication. Net Sales of any Licensed Product, including, but not limited to, Licensed Products pursuant to any other License Agreement executed by Company, shall not be subject to more than one assessment of any scheduled royalty or fee payable to Penn pursuant to this Agreement and the Gewirtz License Agreement; such assessment shall be the lowest applicable royalty and/or fee payable to Penn. Penn shall not assert any right to royalties or fees for any other Licensed Product other than the one with the lesser royalty.

3.8. Transaction Fee. In partial consideration of the License, Company will pay to Penn, within ninety (90) days after the execution of this Agreement, a one-time, non-refundable, non-creditable transaction fee of up to $10,000 with respect to Penn's licensing and legal expenses in connection with this Agreement, the Gewirtz License Agreement and the Equity Documents.

4. REPORTS AND PAYMENTS

4.1. Royalty Reports. Within forty-five (45) days after the end of each Quarter, Company will deliver to Penn a report, certified by the chief financial officer of Company, detailing the calculation of all royalties and fees due to Penn for such Quarter. Unless otherwise included on a form provided to Company by Penn or otherwise agreed to by Penn, this report will include, at a minimum: (a) the number of Licensed Products involved in Sales, listed by product, by country; (b) gross consideration invoiced, billed or received for Sales in the Quarter; (c) Qualifying Costs, listed by category of cost; (d) Net Sales, listed by product, by country; (e) sublicense fees and other consideration received by Company from sublicensees, listed by product, by country; and (f) royalties and fees owed to Penn, listed by category, by product, by country.

4.2. Payments. Company will pay all royalties and fees due to Penn under Article 3, that have not been paid in advance, within forty-five (45) days after the end of the Quarter in which the royalties or fees accrue.

4.3. Records. Company will maintain, and will cause its Affiliates and sublicensees to maintain, adequate books and records to verify Sales, Net Sales, and all of the royalties, fees, and other payments due under this Agreement. The records for each Quarter will be maintained for at least four (4) years after submission of the applicable report required under Section 4.1.

4.4. Audit Rights. Upon reasonable prior written notice to Company, Company and its Affiliates and sublicensees will provide Penn and its accountants with access to all of the books and records required by Section 4.3 to conduct a review or audit

of Sales, Net Sales, and all of the royalties, fees, and other payments payable under this Agreement. Access will be made available: (a) during normal business hours; (b) in a manner reasonably designated to facilitate Penn's review or audit without disruption to Company's business; and (c) no more than once each calendar year during the Term and for a period of four (4) years thereafter. Company will promptly pay to Penn the amount of any underpayment, if undisputed, determined by the review or audit plus accrued interest. If the review or audit determines that Company has underpaid any royalty payment by five percent (5%) or more, then Company will also promptly pay the costs and expenses of Penn and its accountants in connection with the review or audit. In addition once annual Sales of Licensed Products exceed twenty five million dollars ($25,000,000), at the written request of Penn, Company will conduct, at least once every two (2) years at its own expense, which expense shall not be reasonably expected to exceed fifteen thousand dollars ($15,000), an independent audit of Sales, Net Sales, and all of the royalties, fees and other payments payable under this Agreement. Promptly after completion of the audit, Company will provide to Penn a copy of the report of the independent auditors.

4.5. Information Rights. Until the closing of the Company's initial public offering, Company will provide to Penn, at least as frequently as they are distributed to the Board of Directors or management of Company, copies of: (a) relevant portions of all Board and managerial reports that relate to the Penn Patent Rights or the Licensed Products; and (b) relevant portions of all business plans, projections and financial statements for Company that are distributed to the Board of Directors or management of Company and which are related to the Penn Patent Rights or the Licensed Products. After the closing of the Company's IPO, Company will provide to Penn, promptly after filing, a copy of each annual report, proxy statement, 10-K, 10-Q and other material report filed with the U.S. Securities and Exchange Commission.

4.6. Currency. All dollar amounts referred to in this Agreement are expressed in United States dollars. All payments will be made in United States dollars. If Company receives payment from a third party in a currency other than United States dollars for which a royalty or fee is owed under this Agreement, then (a) the payment will be converted into United States dollars at the conversion rate for the foreign currency as published in the eastern edition of The Wall Street Journal as of the last business day of the Quarter in which the payment was received by Company, and (b) the conversion computation will be documented by Company in the applicable report delivered to Penn under Section 4.1.

4.7. Place of Payment. All payments by Company are payable to "The Trustees of the University of Pennsylvania" and will be made to the following addresses:

By Electronic Transfer:	**By Check:**
Mellon Bank East	The Trustees of the University of Pennsylvania
ABA #031000037	C/o Center for Technology Transfer
Account Number 2945020	P.O. Box 7777-W3850
C/o CTT/ T. Dunn	Philadelphia, PA 19175-3850

4.8. Interest. All amounts that are not paid by Company when due will accrue interest from the due date until paid at a rate equal to one percent (1.0%) per month (or the maximum allowed by law, if less).

5. CONFIDENTIALITY AND USE OF PENN'S NAME

5.1. Confidential Disclosure Agreement. If Company and Penn entered into one or more Confidential Disclosure Agreements prior to the Effective Date, then such agreements will continue to govern the protection of confidential information under this Agreement, and each Affiliate and sublicensee of Company will be bound to Company's obligations under such agreements.

5.2. Company's Obligation. If, however, no Confidential Disclosure Agreement has been entered into between Company and Penn prior to the Effective Date, then the terms of this Section 5.2 apply. The term "*Confidential Information*" includes all technical information, inventions, developments, discoveries, software, know-how, methods, techniques, formulae, data, processes and other proprietary ideas, whether or not patentable, that Penn identifies as confidential or proprietary at the time it is delivered or communicated to Company. Company will maintain in confidence and not disclose to any third party any Confidential Information. Company will use Confidential Information only for purposes of this Agreement. Company will ensure that Company's Affiliates, sublicensees and employees have access to Confidential Information only on a need to know basis and are obligated in writing to abide by Company's obligations under this Agreement. The obligations under this Section 5.2 will not apply to: (a) information that is known to Company or independently developed by or for Company prior to the time of disclosure, in each case, to the extent evidenced by written records; (b) information that is disclosed to Company by a third party that has a right to make such disclosure; (c) information that becomes patented, published or otherwise part of the public domain through no fault of the Company; or (d) information that is required to be disclosed by order of United States governmental authority or a court of competent jurisdiction, provided that Company shall use its reasonable best efforts to obtain confidential treatment of such information by such agency or court.

5.3. Disclaimer. Penn is not obligated to accept any confidential information from Company, except for the reports required by Sections 2.1 and 4.1 Penn, acting through its Center for Technology Transfer and finance offices, will use reasonable best efforts not to disclose to any third party outside of Penn any confidential information of Company contained in those reports, subject to exceptions analogous to those contained in Section 5.2(a) — (d) above. Penn bears no institutional responsibility for maintaining the confidentiality of any other information of Company. Company may elect to enter into confidentiality agreements with individual investigators at Penn that comply with Penn's internal policies.

5.4. Use of Penn's Name. Company and its Affiliates, sublicensees, employees, and agents may not use the name, logo, seal, trademark, or service mark (including any adaptation of them) of Penn or any Penn school, organization, employee,

student or representative, without the prior written consent of Penn.

6. TERM AND TERMINATION

6.1. Term. This Agreement will commence on Effective Date and terminate upon the later of: (a) the expiration or abandonment of the last patent to expire or become abandoned of the Penn Patent Rights; or (b) if no patent has yet issued from the Penn Patent Rights, ten (10) years after the first commercial sale of the first Licensed Product (as the case may be, the "*Term*").

6.2. Early Termination by Company. Company may terminate this Agreement at any time upon sixty (60) days' prior written notice to Penn after completing each of the following: (a) ceasing to make, have made, use, import, sell and offer for sale all Licensed Products; (b) terminating all sublicenses and causing all Affiliates and sublicensees to cease making, having made, using, importing, selling and offering for sale all Licensed Products; and (c) paying all amounts owed to Penn under this Agreement and any sponsored research agreement through the date of termination.

6.3. Early Termination by Penn. Penn may terminate this Agreement if: (a) Company is more than ninety (90) days late in paying to Penn any amounts owed under this Agreement and does not immediately pay Penn in full upon demand; (b) Company or its Affiliates breaches this Agreement and does not cure the breach within ninety (90) days after written notice by Penn to Company of the breach; or (c) Company experiences a Trigger Event.

6.4. Trigger Event. The term "*Trigger Event*" means any of the following: (a) a material default by Company under any sponsored research agreement between Penn and Company or any of the Equity Documents that is not cured during any specified cure periods; (b) if Company (i) becomes insolvent, bankrupt or generally fails to pay its debts as such debts become due; (ii) is adjudicated insolvent or bankrupt; (iii) admits in writing its inability to pay its debts; (iv) suffers the appointment of a custodian, receiver or trustee for it or its property and, if appointed without its consent, not discharged within thirty (30) days; (v) makes an assignment for the benefit of creditors; or (vi) suffers proceedings being instituted against it under any law related to bankruptcy, insolvency, liquidation or the reorganization, readjustment or the release of debtors and, if contested by it, not dismissed or stayed within ten (10) days; (c) the institution or commencement by Company of any proceedings under any law related to bankruptcy, insolvency, liquidation, or the reorganization, readjustment or release of debtors; (d) the entering of any order for relief relating to any of the proceedings described in Section 6.4(b) or (c) above; (e) the calling by Company of a meeting of its creditors with a view to arranging a composition or adjustment of its debts; or (f) the act or failure to act by Company indicating its consent to, approval of or acquiescence in any of the proceedings described in Section 6.4(b) — (e) above. The events specified in this section 6.4 shall also apply to actions taken by Affiliates of the Company if the taking of any action described in this

section by an Affiliate of the Company causes a material adverse effect to Penn's rights under this Agreement.

6.5. Effect of Termination. Upon termination of this Agreement for any reason: (a) the License terminates; (b) Company and all its Affiliates and sublicensees will cease all making, having made, using, importing, selling and offering for sale all Licensed Products; (c) Company will pay to Penn all amounts owed to Penn through the date of termination under this Agreement and any sponsored research agreement; (d) Company will, at Penn's written request, return to Penn all Confidential Information and provide to Penn copies of all data regarding the Intellectual Property generated by Company during the Term that will facilitate the further development of the RTS Intellectual Property that had been licensed under this Agreement; and (e) in the case of termination under Section 6.3, all duties of Penn and all rights (but not duties) of Company under this Agreement immediately terminate without further action required by either Penn or Company.

6.6. Survival. Company's obligation to pay all amounts owed to Penn under this Agreement will survive the termination of this Agreement for any reason. Section 13.10 and Articles 4, 5, 6, 9, 10, and 11 will survive the termination of this Agreement for any reason in accordance with their respective terms.

7. PATENT MAINTENANCE AND REIMBURSEMENT

7.1. Patent Maintenance. Penn controls the preparation, prosecution and maintenance of the Penn Patent Rights and the selection of patent counsel, with input from Company. If, however, Company decides to manage the preparation, prosecution and maintenance of the Penn Patent Rights with input from Penn, then Company and Penn will enter into with patent counsel a Client and Billing Agreement in the form attached as Exhibit E. As of the date of this Agreement, Company and Penn have entered into a Client and Billing Agreement.

7.2. Patent Reimbursement. Unless otherwise provided by any Client and Billing Agreement, Company will reimburse Penn for all documented attorneys fees, expenses, official fees and all other charges incident to the preparation, prosecution and maintenance of Penn Patent Rights within thirty (30) days after the Company's receipt of invoices for such fees, expenses, and charges.

8. INFRINGEMENT

8.1. Notice. Company and Penn will notify each other promptly of any infringement of the Penn Patent Rights that may come to their attention. Company and Penn will consult each other in a timely manner concerning any appropriate response to the infringement.

8.2. Prosecution. Company may prosecute any infringement of the Penn Patent Rights at Company's expense. Company shall not settle or compromise any such

litigation in a manner that imposes any obligations or restrictions on Penn or grants any rights in the Penn Patent Rights without Penn's prior written permission. Financial recoveries from any such litigation will be: (a) first, applied to reimburse Company for its litigation expenditures; and (b) second, as to any remainder, retained by Company, but treated as Net Sales for the purpose of determining the royalties due to Penn under Section 3.4.

8.3. Intervention. Penn reserves the right to intervene at Penn's expense and join Company in any litigation under Section 8.2 after first giving notice of such intention to intervene to Company. If Penn elects to participate in any such litigation, then, in lieu of the division of recoveries specified in Section 8.2, financial recoveries from any such litigation will be shared between Company and Penn in proportion with their respective shares of the aggregate litigation expenditures by Company and Penn or as otherwise agreed to by Penn and Company.

8.4. Penn Prosecution. If Company does not prosecute any infringement of the Penn Patent Rights, then Penn may elect to prosecute such infringement at Penn's expense. If Penn elects to prosecute such infringement, then financial recoveries will be retained by Penn in their entirety.

8.5. Cooperation. In any litigation under this Article 8, either party at the request and expense of the party, will cooperate to the fullest extent reasonably possible. This Section 8.5 will not be construed to require either party to undertake any activities, including legal discovery, at the request of any third party, except as may be required by lawful process of a court of competent jurisdiction.

9. DISCLAIMER OF WARRANTIES

9.1. Disclaimer. THE PENN PATENT RIGHTS, LICENSED PRODUCTS AND ANY OTHER TECHNOLOGY LICENSED UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" BASIS. PENN MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF ACCURACY, COMPLETENESS, PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COMMERCIAL UTILITY, NON-INFRINGEMENT OR TITLE.

10. LIMITATION OF LIABILITY

10.1. Limitation of Liability. PENN WILL NOT BE LIABLE TO COMPANY, ITS AFFILIATES, OR SUBLICENSEES, ITS SUCCESSORS OR ASSIGNS, OR ANY THIRD PARTY WITH RESPECT TO ANY CLAIM: ARISING FROM COMPANY'S USE OF THE PENN PATENT RIGHTS, LICENSED PRODUCTS OR ANY OTHER TECHNOLOGY LICENSED UNDER THIS AGREEMENT; ARISING FROM THE DEVELOPMENT, TESTING, MANUFACTURE, USE OR SALE OF LICENSED PRODUCTS; OR FOR LOST PROFITS, BUSINESS INTERRUPTION, OR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND.

11. INDEMNIFICATION

11.1. Indemnification. Company will defend, indemnify, and hold harmless Penn, and its trustees, officers, faculty, agents, employees and students (each, an "*Indemnified Party*"), from and against any and all liability, loss, damage, action, claim, or expense suffered or incurred by the Indemnified Parties, including attorneys' fees and expense (collectively, "*Liabilities*") arising out of or resulting from: (a) the development, testing, use, manufacture, promotion, sale or other disposition of any Penn Patent Rights or Licensed Products by Company, its Affiliates or sublicensees; (b) any material breach of this Agreement by Company or its Affiliates or sublicensees; and (c) the enforcement of this Article 11 by any Indemnified Party. Liabilities include, but are not limited to: (x) any product liability or other claim of any kind related to use by a third party of a Licensed Product that was manufactured, sold or otherwise disposed of by Company, its Affiliates, sublicensees, assignees or vendors or third parties; (y) a claim by a third party that the Penn Patent Rights or the design, composition, manufacture, use, sale or other disposition of any Licensed Product infringes or violates any patent, copyright, trade secret, trademark or other intellectual property right of such third party; and (z) clinical trials or studies conducted by or on behalf of Company, its Affiliates, sublicensees, assignees or vendors or third parties relating to the Penn Patent Rights or the Licensed Products, such as claims by or on behalf of a human subject of any such clinical trial or study.

11.2. Other Provisions. Company shall not settle or compromise any claim or action giving rise to Liabilities in any manner that imposes any restrictions on obligations on Penn or grants any rights to the Penn Patent Rights or the Licensed Products without Penn's prior written consent. If Company fails or declines to assume the defense of any claim or action within thirty (30) days after notice of the claim or action, then Penn may assume the defense of such claim or action for the account and at the risk of Company, and any Liabilities related to such claim or action will be conclusively deemed a liability of Company. The indemnification rights of the Indemnified Parties under this Article 11 are in addition to all other rights that an Indemnified Party may have at law, in equity or otherwise.

12. INSURANCE

12.1. Coverages. Before any Licensed Product is to be tested on or administered to a living human subject, Company will procure and maintain insurance policies for the following coverages with respect to personal injury, bodily injury and property damage arising out of Company's performance under this Agreement: (a) during the Term, comprehensive general liability, including broad form and contractual liability, in a minimum amount of $2,000,000 combined single limit per occurrence and in the aggregate; (b) prior to the commencement of clinical trials involving Licensed Products, clinical trials coverage in a minimum amount of $2,000,000 combined single limit per occurrence and in the aggregate; and (c) prior to the sale of the first Licensed Product, product liability coverage, in a minimum amount of $3,000,000 combined single limit per occurrence and in the aggregate. Penn may review periodically the adequacy of the minimum amounts of insurance for each coverage required by this Section 12.1, and

Penn reserves the right to require Company to adjust the limits accordingly in accordance with customary industry standards. The required minimum amounts of insurance do not constitute a limitation on Company's liability or indemnification obligations to Penn under this Agreement.

12.2. Other Requirements. The policies of insurance required by Section 12.1 will be issued by an insurance carrier with an A.M. Best rating of "A" or better and will name Penn as an additional insured with respect to Company's performance under this Agreement. Company will provide Penn with insurance certificates evidencing the required coverage within thirty (30) days after commencement of each policy period and all renewal periods. Company will use its reasonable best efforts to cause each certificate to provide that the insurance carrier will notify Penn in writing at least thirty (30) days prior to the cancellation or material change in coverage.

13. ADDITIONAL PROVISIONS

13.1. Independent Contractors. The parties are independent contractors. Nothing contained in this Agreement is intended to create an agency, partnership or joint venture between the parties. At no time will either party make commitments or incur any charges or expenses for or on behalf of the other party.

13.2. No Discrimination. Neither Penn nor Company will discriminate against any employee or applicant for employment because of race, color, sex, sexual or affectional preference, age, religion, national or ethnic origin, handicap, or veteran status.

13.3. Compliance with Laws. Company shall comply with all prevailing laws, rules and regulations that apply to its activities or obligations under this Agreement. Company will comply with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the applicable agency of the United States government and/or written assurances by Company that Company shall not export data or commodities to certain foreign countries without prior approval of the agency. Penn does not represent that no license is required, or that, if required, the license will issue.

13.4. Modification, Waiver and Remedies. This Agreement may only be modified by a written amendment that is executed by an authorized representative of each party. Any waiver must be express and in writing. No waiver by either party of a breach by the other party will constitute a waiver of any different or succeeding breach. Unless otherwise specified, all remedies are cumulative.

13.5. Assignment. Company may not assign this Agreement or any part of it, either directly or by merger or other operation of law, without the prior written consent of Penn. Penn will not unreasonably withhold or delay its consent, and will raise any objection to such assignment within thirty (30) days of notice from Company, provided that: (a) at least thirty (30) days before the proposed transaction, Company gives Penn written notice and such background information as may be reasonably necessary to

enable Penn to give an informed consent; (b) the assignee agrees in writing to be legally bound by this Agreement; and (c) the assignee agrees in writing to deliver to Penn an updated Development Plan within forty-five (45) days after the closing of the proposed transaction. Any permitted assignment will not relieve Company of responsibility for the performance of any obligation of Company that has accrued at the time of the assignment. Any prohibited assignment will be null and void. Notwithstanding anything above to the contrary, Company may assign this Agreement at any time if the assignee had revenues equal to or greater than one billion dollars ($1,000,000,000) in the fiscal year prior to the assignment.

13.6. Notices. Any notice or other required communications (each, a "*Notice*") must be in writing, addressed to the party's respective Notice Address listed on the signature page, and delivered: (a) personally; (b) by certified mail, postage prepaid return, receipt requested; (c) by recognized overnight courier service, charges prepaid; or (d) by facsimile. A Notice will be deemed received: if delivered personally, on the date of delivery; if mailed, five (5) days after deposit in the United States mail; if sent via courier, one (1) business day after deposit with the courier service; or if sent via facsimile, upon receipt of confirmation of transmission provided that a confirming copy of such Notice is sent by certified mail, postage prepaid, return receipt requested.

13.7. Severability and Reformation. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions of this Agreement will remain in full force and effect. Such invalid or unenforceable provision will be automatically revised to be a valid or enforceable provision that comes as close as permitted by law to the parties original intent.

13.8. Headings and Counterparts. The headings of the articles and sections included in this Agreement are for convenience only and are not intended to affect the meaning or interpretation of this Agreement. This Agreement may be executed in several counterparts, all of which taken together will constitute the same instrument.

13.9. Governing Law. This Agreement will be governed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to the conflict of law provisions of any jurisdiction.

13.10. Dispute Resolution. If a dispute arises between the parties concerning any right or duty under this Agreement, then the parties will confer, as soon as practicable, in an attempt to resolve the dispute. If the parties are unable to resolve the dispute amicably, then the parties will submit to the exclusive jurisdiction of, and venue in, the state and Federal courts located in the Eastern District of Pennsylvania with respect to all disputes arising under this Agreement.

13.11. Integration. This Agreement with its Exhibits and the Equity Documents, and the Gewirtz License Agreement, contain the entire agreement between the parties with respect to the Penn Patent Rights and the License and supersede all other oral or written representations, statements or agreements with respect to such subject matter, including but not limited to any term sheet.

Each party has caused this Agreement to be executed by its duly authorized representative.

THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA

By: /s/ Louis P. Berneman
Name: Louis P. Berneman
Title: Managing Director, Center for Technology Transfer

Address: Center for Technology Transfer
University of Pennsylvania
3160 Chestnut Street, Suite 200
Philadelphia, PA 19104-6283
Attention: Managing Director

Required copy to: Office of General Counsel
University of Pennsylvania
133 South 36th Street, Suite 300
Philadelphia, PA 19104-3246
Attention: General Counsel

ACUITY PHARMACEUTICALS, INC.

By: /s/ Dale R. Pfost
Name: Dale R. Pfost
Title: President and Chief Executive Officer

Acuity Pharmaceuticals, Inc.
C/O Center for Technology Transfer
University of Pennsylvania
3160 Chestnut Street, Suite 200
Philadelphia, PA 19104-6283
Attention: Dale R. Pfost

Drinker Biddle & Reath LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996
Attention: Neil K. Haimm, Esq.

EXHIBIT 10.14

University *of* Pennsylvania

License Agreement

This Agreement (this "*Agreement*") is between The Trustees of the University of Pennsylvania, a Pennsylvania nonprofit corporation ("*Penn*"), and Acuity Pharmaceuticals, Inc., a Delaware corporation ("*Company*"). This Agreement is being signed on March 31, 2003. This Agreement will become effective on March 31, 2003 (the "*Effective Date*").

BACKGROUND

Penn owns certain intellectual property developed by Dr. Alan Gewirtz of Penn's School of Medicine, Department of Medicine, relating to the body of work known as RNA interference (the "*Gewirtz Intellectual Property*"). Penn also owns certain applications for United States letters patent relating to the Gewirtz Intellectual Property. Company desires to obtain an exclusive license under the patent rights to exploit the Gewirtz Intellectual Property. Penn has determined that the exploitation of the Gewirtz Intellectual Property by Company is in the best interests of Penn and is consistent with its educational and research missions and goal.

Simultaneously with the execution of this Agreement, Penn and Company are executing an exclusive license agreement for certain intellectual property developed by Dr. Michael J. Tolentino, Mr. Samuel J. Reich and Mr. Enrico M. Surace (together with the Gewirtz Intellectual Property, the "*Intellectual Property*"), also relating to the body of work known as RNA interference (the "*RTS License Agreement*").

In consideration of the mutual obligations contained in this Agreement, and intending to be legally bound, the parties agree as follows:

1. LICENSE

1.1. License Grant. Penn grants to Company an exclusive, world-wide license (the "*License*") to make, have made, use, import, sell and offer for sale Licensed Products during the Term (as such terms may be defined in Sections 1.2 and 6.1). The License includes the right to sublicense as permitted by this Agreement. No other rights or licenses are granted by Penn.

1.2. Related Definitions.

The term "*Licensed Products*" means products that are made, made for, used, imported, sold or offered for sale by Company or its Affiliates or sublicensees and that either (i) in the absence of this Agreement, would infringe at least one claim of the Penn Patent Rights or (ii) use a process or machine covered by a claim of Penn Patent Rights.

The term "*Sale*" means any bona fide transaction for which consideration is received or expected for the sale, use, lease, transfer or other disposition of a Licensed Product, and a Sale is deemed completed at the time that Company or its Affiliate or sublicensee invoices, ships or receives payment for a Licensed Product, whichever occurs first.

The term "*Penn Patent Rights*" means all patent rights represented by or issuing from: (i) the United States patent applications and/or Penn docket numbers listed in Exhibit A; (ii) any continuation, divisional and re-issue applications of (i); and (ii) any foreign counterparts and extensions of (i) or (ii).

The term "*Affiliate*" means a legal entity that is controlling, controlled by or under common control with Company and that has executed either this Agreement or a written Joinder Agreement agreeing to be bound by all of the terms and conditions of this Agreement. For purposes of this Section 1.2, the word "*control*" means (i) the direct or indirect ownership of more than fifty percent (50%) of the outstanding voting securities of a legal entity, (ii) the right to receive fifty percent (50%) or more of the profits or earnings of a legal entity or (iii) the right to determine the policy decisions of a legal entity.

The term "*Significant Transaction*" shall mean a single transaction or series of related transactions consisting of or resulting in any of the following: (i) an assignment of the License, (ii) an exclusive worldwide sublicense of all or substantially all of the intellectual property rights granted to Company under the RTS License Agreement and a non-exclusive or exclusive, in either case, worldwide sublicense of all or substantially all of the intellectual property rights granted to Company under this Agreement, (iii) an initial public offering of securities by Company or other transaction resulting in either: (a) Company becoming a public company or (b) any of Company's securities being traded on a nationally recognized stock exchange or automated quotation system, (iv) a sale, license or other disposition of all or substantially all of Company's assets, or (v) a reorganization, consolidation or merger of Company, or sale or transfer of the securities of Company, where the holders of Company's outstanding voting securities before the transaction beneficially own less than fifty percent (50%) of the outstanding voting securities, or hold less than fifty percent (50%) of the voting power of the voting securityholders of the surviving entity after the transaction. Notwithstanding anything above to the contrary, a Significant Transaction shall not be deemed to occur as a result of a bona fide, arms-length equity financing for cash in which Company issues securities representing more than fifty percent (50%) of the voting power of its securityholders to venture capital or other similar investors who do not actively manage day-to-day operations of Company.

1.3. Reservation of Rights by Penn. Penn reserves the right to use, and to permit other non-commercial entities to use, the Penn Patent Rights for educational and research purposes only.

1.4. U.S. Government Rights. The parties acknowledge that the United States government retains rights in intellectual property funded under any grant or similar

contract with a Federal agency. The License is expressly subject to all applicable United States government rights, including, but not limited to, any applicable requirement that products, which result from such intellectual property and are sold in the United States, must be substantially manufactured in the United States as conditioned by 37 CFR 401.

1.5. Sublicense Conditions. The Company's right to sublicense granted by Penn under the License is subject to each of the following conditions:

(a) In each sublicense agreement, Company will prohibit the sublicensee from further sublicensing and require the sublicensee to comply with the terms and conditions of this Agreement.

(b) Within thirty (30) days after Company enters into a sublicense agreement, Company will deliver to Penn an executed copy of the entire sublicense agreement written in the English language. Penn's receipt of the sublicense agreement, however, will not constitute a waiver of any right of Penn or obligation of Company under this Agreement.

(c) In the event that Company causes or experiences a Trigger Event (as defined in Section 6.4), all payments due to Company and its Affiliates or sublicensees under the sublicense agreement will, upon notice from Penn to such Affiliate or sublicensee, become payable directly to Penn for the account of Company. Upon receipt of any such funds, Penn will remit to Company the amount by which such payments exceed the amounts owed by Company to Penn.

(d) Company's execution of a sublicense agreement will not relieve Company of any of its obligations under this Agreement. Company is primarily liable to Penn for any act or omission of an Affiliate or sublicensee of Company that would be a breach of this Agreement if performed or omitted by Company, and Company will be deemed to be in breach of this Agreement as a result of such act or omission.

2. DILIGENCE

2.1. Development Plan. Company will deliver to Penn, within ninety (90) days after the Effective Date, a copy of an initial development plan for the Penn Patent Rights (the "*Development Plan*"). The purpose of the Development Plan is (a) to demonstrate Company's capability to bring the Penn Patent Rights to commercialization, (b) to project the timeline for completing the necessary tasks, and (c) to measure Company's progress against the projections. Thereafter, Company will deliver to Penn an annual updated Development Plan no later than December 1 of each year during the Term. The Development Plan will include, at a minimum, the information listed in Exhibit B.

2.2. Company's Efforts. Company will use commercially reasonable efforts to develop, commercialize, market and sell Licensed Products in a manner consistent with the Development Plan.

2.3. Diligence Events. The Company will use commercially reasonable efforts to achieve each of the diligence events by the applicable completion date listed in the table below for the first product to be commercialized by the Company pursuant to this Agreement or the RTS License Agreement.

DILIGENCE EVENT	COMPLETION DATE
Delivery to Penn of a preliminary business plan	June 30, 2003
Raising at least an aggregate of $5 Million in equity investment capital from qualified investors	December 31, 2004
Filing of IND for first Licensed Product	January 31, 2005
Initiation of Phase II clinical trials for first Licensed Product	December 31, 2007
Initiation of Phase III clinical trials for first Licensed Product	December 31, 2010
First commercial Sale of first Licensed Product	December 31, 2013

3. FEES AND ROYALTIES

3.1. Equity Issuance. In partial consideration of the License, Company will issue to Penn on the Effective Date such number of shares of Common Stock of the Company as will cause Penn to own at least six percent (6%) of the capital stock of Company on a fully diluted basis, assuming the exercise, conversion and exchange of all outstanding securities of Company for or into shares of Common Stock. The issuance of equity to Penn will be pursuant to a Stock Purchase Agreement and a Stockholders Agreement between Company and Penn, the forms of which are attached as Exhibits C and D (the "*Equity Documents*").

3.2. Dilution Protection. In partial consideration of the License, through the closing of the equity financing round at which Company has raised cumulatively at least an aggregate of seven hundred and fifty thousand dollars ($750,000) in net proceeds to Company of equity financing from qualified investors, Company will issue to Penn, from time to time and at no additional consideration, such additional number of shares of Common Stock of Company as will cause Penn to continue to hold in the aggregate six percent (6%) of the capital stock of Company on a fully diluted basis, assuming the exercise, conversion and exchange of all outstanding securities of Company for or into shares of Common Stock.

3.3. Milestone Payments. In partial consideration of the License, Company will pay to Penn the applicable milestone payment listed in the table below after achievement of each milestone event for the first product commercialized and sold by the Company or its Affiliates pursuant to this Agreement or the RTS License Agreement.

MILESTONE	PAYMENT
Initiation of Phase II clinical trials for first Licensed Product	$ 50,000
Initiation of Phase III clinical trials for first Licensed Product	$ 300,000
First commercial Sale of first Licensed Product	$ 600,000

3.4. Earned Royalties. In partial consideration of the License, Company will

pay to Penn a royalty of eight percent (8%) of Net Sales of a Licensed Product sold by the Company or its Affiliates (but not sublicensees of the Company) during each Quarter following the occurrence of a Significant Transaction. The term "*Quarter*" means each three-month period beginning on January 1, April 1, July 1 and October 1. The term "*Net Sales*" means the consideration received from, or fair market value attributable to, each Sale, less Qualifying Costs directly attributable to a Sale and borne by Company or its Affiliates For purposes of determining Net Sales, the words "fair market value" mean the cash consideration that Company or its Affiliates would realize from an unrelated buyer in an arms length sale of an identical item sold in the same quantity and at the time and place of the transaction. The term "*Qualifying Costs*" means: (a) customary discounts in the trade for quantity purchased, prompt payment or wholesalers and distributors; (b) credits or refunds for claims or returns that do not exceed the original invoice amount; (c) prepaid outbound transportation expenses and transportation insurance premiums; and (d) sales and use taxes and other fees imposed by a governmental agency.

3.5. Reduction of Royalty. If Company is required to pay royalties to Penn and third parties that, in the aggregate, exceed eight percent (8%) of Net Sales (the "*Total Royalty*") to commercialize a Licensed Product, the royalties due to Penn for such time, with respect to such a Licensed Product shall be reduced by two tenths of one percent (0.2%) for every one percent (1%) the aggregate royalty exceeds eight percent (8%) of Net Sales. To clarify, Company shall pay to Penn a royalty of 8% — (0.2*(Total Royalty — 8%)) of the Net Sales. In no event shall the royalties due to Penn be reduced below four percent (4%) of Net Sales by Company or its Affiliates.

3.6. Sublicense Fees. Except as otherwise provided below, in partial consideration of the License, Company will pay to Penn a sublicense fee of six percent (6%) of all payments and the fair value of all other consideration of any kind received by Company from sublicensees.

Notwithstanding anything above to the contrary, no sublicense fee under this Section 3.6 will be due to Penn with respect to any of the following consideration received by Company: (i) consideration received by the Company from sublicensees before the earlier of (a) the third anniversary of the Effective Date and (b) the occurrence of a Significant Transaction as long as such fees are reinvested in the development of the Intellectual Property, (ii) equity investments in Company by a sublicensee, up to the amount of the fair market value of the equity purchased on the date of the investment as reasonably determined under the circumstances; (iii) sponsored research funding paid to Company by a sublicensee in a bona fide transaction for future research to be performed by Company; (iv) payments for consulting services actually performed by Company in a bona fide transaction at arms length rates; and (v) intellectual property rights received by Company from a sublicensee, including, but not limited to, licenses or sublicenses to intellectual property rights, covenants not to compete against Company, or agreements not to assert claims against Company.

3.7. Non-Assertion and Non-Duplication. Net Sales of any Licensed Product, including, but not limited to, Licensed Products pursuant to any other License Agreement

executed by Company, shall not be subject to more than one assessment of any scheduled royalty or fee payable to Penn pursuant to this Agreement and the RTS License Agreement; such assessment shall be the lowest applicable royalty and/or fee payable to Penn. Penn shall not assert any right to royalties or fees for any other Licensed Product other than the one with the lesser royalty.

4. REPORTS AND PAYMENTS

4.1. Royalty Reports. Within forty-five (45) days after the end of each Quarter, Company will deliver to Penn a report, certified by the chief financial officer of Company, detailing the calculation of all royalties and fees due to Penn for such Quarter. Unless otherwise included on a form provided to Company by Penn or otherwise agreed to by Penn, this report will include, at a minimum: (a) the number of Licensed Products involved in Sales, listed by product, by country; (b) gross consideration invoiced, billed or received for Sales in the Quarter; (c) Qualifying Costs, listed by category of cost; (d) Net Sales, listed by product, by country; (e) sublicense fees and other consideration received by Company from sublicensees, listed by product, by country; and (f) royalties and fees owed to Penn, listed by category, by product, by country.

4.2. Payments. Company will pay all royalties and fees due to Penn under Article 3, that have not been paid in advance, within forty-five (45) days after the end of the Quarter in which the royalties or fees accrue.

4.3. Records. Company will maintain, and will cause its Affiliates and sublicensees to maintain, adequate books and records to verify Sales, Net Sales, and all of the royalties, fees, and other payments due under this Agreement. The records for each Quarter will be maintained for at least four (4) years after submission of the applicable report required under Section 4.1.

4.4. Audit Rights. Upon reasonable prior written notice to Company, Company and its Affiliates and sublicensees will provide Penn and its accountants with access to all of the books and records required by Section 4.3 to conduct a review or audit of Sales, Net Sales, and all of the royalties, fees, and other payments payable under this Agreement. Access will be made available: (a) during normal business hours; (b) in a manner reasonably designated to facilitate Penn's review or audit without disruption to Company's business; and (c) no more than once each calendar year during the Term and for a period of four (4) years thereafter. Company will promptly pay to Penn the amount of any underpayment, if undisputed, determined by the review or audit plus accrued interest. If the review or audit determines that Company has underpaid any royalty payment by five percent (5%) or more, then Company will also promptly pay the costs and expenses of Penn and its accountants in connection with the review or audit. In addition once annual Sales of Licensed Products exceed twenty five million dollars ($25,000,000), at the written request of Penn, Company will conduct, at least once every two (2) years at its own expense, which expense shall not be reasonably expected to exceed fifteen thousand dollars ($15,000), an independent audit of Sales, Net Sales, and all of the royalties, fees and other payments payable under this Agreement. Promptly

after completion of the audit, Company will provide to Penn a copy of the report of the independent auditors.

4.5. Information Rights. Until the closing of the Company's initial public offering, Company will provide to Penn, at least as frequently as they are distributed to the Board of Directors or management of Company, copies of: (a) relevant portions of all Board and managerial reports that relate to the Penn Patent Rights or the Licensed Products; and (b) relevant portions of all business plans, projections and financial statements for Company that are distributed to the Board of Directors or management of Company and which are related to the Penn Patent Rights or the Licensed Products. After the closing of the Company's IPO, Company will provide to Penn, promptly after filing, a copy of each annual report, proxy statement, 10-K, 10-Q and other material report filed with the U.S. Securities and Exchange Commission.

4.6. Currency. All dollar amounts referred to in this Agreement are expressed in United States dollars. All payments will be made in United States dollars. If Company receives payment from a third party in a currency other than United States dollars for which a royalty or fee is owed under this Agreement, then (a) the payment will be converted into United States dollars at the conversion rate for the foreign currency as published in the eastern edition of The Wall Street Journal as of the last business day of the Quarter in which the payment was received by Company, and (b) the conversion computation will be documented by Company in the applicable report delivered to Penn under Section 4.1.

4.7. Place of Payment. All payments by Company are payable to "The Trustees of the University of Pennsylvania" and will be made to the following addresses:

By Electronic Transfer:	**By Check:**
Mellon Bank East	The Trustees of the University of Pennsylvania
ABA #031000037	C/o Center for Technology Transfer
Account Number 2945020	P.O. Box 7777-W3850
C/o CTT/ T. Dunn	Philadelphia, PA 19175-3850

4.8. Interest. All amounts that are not paid by Company when due will accrue interest from the due date until paid at a rate equal to one percent (1.0%) per month (or the maximum allowed by law, if less).

5. CONFIDENTIALITY AND USE OF PENN'S NAME

5.1. Confidential Disclosure Agreement. If Company and Penn entered into one or more Confidential Disclosure Agreements prior to the Effective Date, then such agreements will continue to govern the protection of confidential information under this Agreement, and each Affiliate and sublicensee of Company will be bound to Company's obligations under such agreements.

5.2. Company's Obligation. If, however, no Confidential Disclosure

Agreement has been entered into between Company and Penn prior to the Effective Date, then the terms of this Section 5.2 apply. The term "*Confidential Information*" includes all technical information, inventions, developments, discoveries, software, know-how, methods, techniques, formulae, data, processes and other proprietary ideas, whether or not patentable, that Penn identifies as confidential or proprietary at the time it is delivered or communicated to Company. Company will maintain in confidence and not disclose to any third party any Confidential Information. Company will use Confidential Information only for purposes of this Agreement. Company will ensure that Company's Affiliates, sublicensees and employees have access to Confidential Information only on a need to know basis and are obligated in writing to abide by Company's obligations under this Agreement. The obligations under this Section 5.2 will not apply to: (a) information that is known to Company or independently developed by or for Company prior to the time of disclosure, in each case, to the extent evidenced by written records; (b) information that is disclosed to Company by a third party that has a right to make such disclosure; (c) information that becomes patented, published or otherwise part of the public domain through no fault of the Company; or (d) information that is required to be disclosed by order of United States governmental authority or a court of competent jurisdiction, provided that Company shall use its reasonable best efforts to obtain confidential treatment of such information by such agency or court.

5.3. Disclaimer. Penn is not obligated to accept any confidential information from Company, except for the reports required by Sections 2.1 and 4.1 Penn, acting through its Center for Technology Transfer and finance offices, will use reasonable best efforts not to disclose to any third party outside of Penn any confidential information of Company contained in those reports, subject to exceptions analogous to those contained in Section 5.2(a) — (d) above. Penn bears no institutional responsibility for maintaining the confidentiality of any other information of Company. Company may elect to enter into confidentiality agreements with individual investigators at Penn that comply with Penn's internal policies.

5.4. Use of Penn's Name. Company and its Affiliates, sublicensees, employees, and agents may not use the name, logo, seal, trademark, or service mark (including any adaptation of them) of Penn or any Penn school, organization, employee, student or representative, without the prior written consent of Penn.

6. TERM AND TERMINATION

6.1. Term. This Agreement will commence on Effective Date and terminate upon the later of: (a) the expiration or abandonment of the last patent to expire or become abandoned of the Penn Patent Rights; or (b) if no patent has yet issued from the Penn Patent Rights, ten (10) years after the first commercial sale of the first Licensed Product (as the case may be, the "*Term*").

6.2. Early Termination by Company. Company may terminate this Agreement at any time upon sixty (60) days' prior written notice to Penn after completing each of the following: (a) ceasing to make, have made, use, import, sell and offer for sale all

Licensed Products; (b) terminating all sublicenses and causing all Affiliates and sublicensees to cease making, having made, using, importing, selling and offering for sale all Licensed Products; and (c) paying all amounts owed to Penn under this Agreement and any sponsored research agreement through the date of termination.

6.3. Early Termination by Penn. Penn may terminate this Agreement if: (a) Company is more than ninety (90) days late in paying to Penn any amounts owed under this Agreement and does not immediately pay Penn in full upon demand; (b) Company or its Affiliates breaches this Agreement and does not cure the breach within ninety (90) days after written notice by Penn to Company of the breach; or (c) Company experiences a Trigger Event.

6.4. Trigger Event. The term "*Trigger Event*" means any of the following: (a) a material default by Company under any sponsored research agreement between Penn and Company or any of the Equity Documents that is not cured during any specified cure periods; (b) if Company (i) becomes insolvent, bankrupt or generally fails to pay its debts as such debts become due; (ii) is adjudicated insolvent or bankrupt; (iii) admits in writing its inability to pay its debts; (iv) suffers the appointment of a custodian, receiver or trustee for it or its property and, if appointed without its consent, not discharged within thirty (30) days; (v) makes an assignment for the benefit of creditors; or (vi) suffers proceedings being instituted against it under any law related to bankruptcy, insolvency, liquidation or the reorganization, readjustment or the release of debtors and, if contested by it, not dismissed or stayed within ten (10) days; (c) the institution or commencement by Company of any proceedings under any law related to bankruptcy, insolvency, liquidation, or the reorganization, readjustment or release of debtors; (d) the entering of any order for relief relating to any of the proceedings described in Section 6.4(b) or (c) above; (e) the calling by Company of a meeting of its creditors with a view to arranging a composition or adjustment of its debts; or (f) the act or failure to act by Company indicating its consent to, approval of or acquiescence in any of the proceedings described in Section 6.4(b) — (e) above. The events specified in this section 6.4 shall also apply to actions taken by Affiliates of the Company if the taking of any action described in this section by an Affiliate of the Company causes a material adverse effect to Penn's rights under this Agreement.

6.5. Effect of Termination. Upon termination of this Agreement for any reason: (a) the License terminates; (b) Company and all its Affiliates and sublicensees will cease all making, having made, using, importing, selling and offering for sale all Licensed Products; (c) Company will pay to Penn all amounts owed to Penn through the date of termination under this Agreement and any sponsored research agreement; (d) Company will, at Penn's written request, return to Penn all Confidential Information and provide to Penn copies of all data regarding the Intellectual Property generated by Company during the Term that will facilitate the further development of the Gewirtz Intellectual Property that had been licensed under this Agreement; and (e) in the case of termination under Section 6.3, all duties of Penn and all rights (but not duties) of Company under this Agreement immediately terminate without further action required by either Penn or Company.

6.6. Survival. Company's obligation to pay all amounts owed to Penn under this Agreement will survive the termination of this Agreement for any reason. Section 13.10 and Articles 4, 5, 6, 9, 10, and 11 will survive the termination of this Agreement for any reason in accordance with their respective terms.

7. PATENT MAINTENANCE AND REIMBURSEMENT

7.1. Patent Maintenance. Penn controls the preparation, prosecution and maintenance of the Penn Patent Rights and the selection of patent counsel, with input from Company. If, however, Company decides to manage the preparation, prosecution and maintenance of the Penn Patent Rights with input from Penn, then Company and Penn will enter into with patent counsel a Client and Billing Agreement in the form attached as Exhibit E. As of the date of this Agreement, Company and Penn have entered into a Client and Billing Agreement.

7.2. Patent Reimbursement. Unless otherwise provided by any Client and Billing Agreement, Company will reimburse Penn for all documented attorneys fees, expenses, official fees and all other charges incident to the preparation, prosecution and maintenance of Penn Patent Rights within thirty (30) days after the Company's receipt of invoices for such fees, expenses, and charges.

8. INFRINGEMENT

8.1. Notice. Company and Penn will notify each other promptly of any infringement of the Penn Patent Rights that may come to their attention. Company and Penn will consult each other in a timely manner concerning any appropriate response to the infringement.

8.2. Prosecution. Company may prosecute any infringement of the Penn Patent Rights at Company's expense. Company shall not settle or compromise any such litigation in a manner that imposes any obligations or restrictions on Penn or grants any rights in the Penn Patent Rights without Penn's prior written permission. Financial recoveries from any such litigation will be: (a) first, applied to reimburse Company for its litigation expenditures; and (b) second, as to any remainder, retained by Company, but treated as Net Sales for the purpose of determining the royalties due to Penn under Section 3.4.

8.3. Intervention. Penn reserves the right to intervene at Penn's expense and join Company in any litigation under Section 8.2 after first giving notice of such intention to intervene to Company. If Penn elects to participate in any such litigation, then, in lieu of the division of recoveries specified in Section 8.2, financial recoveries from any such litigation will be shared between Company and Penn in proportion with their respective shares of the aggregate litigation expenditures by Company and Penn or as otherwise agreed to by Penn and Company.

8.4. Penn Prosecution. If Company does not prosecute any infringement of the

Penn Patent Rights, then Penn may elect to prosecute such infringement at Penn's expense. If Penn elects to prosecute such infringement, then financial recoveries will be retained by Penn in their entirety.

8.5. Cooperation. In any litigation under this Article 8, either party at the request and expense of the party, will cooperate to the fullest extent reasonably possible. This Section 8.5 will not be construed to require either party to undertake any activities, including legal discovery, at the request of any third party, except as may be required by lawful process of a court of competent jurisdiction.

9. DISCLAIMER OF WARRANTIES

9.1. Disclaimer. THE PENN PATENT RIGHTS, LICENSED PRODUCTS AND ANY OTHER TECHNOLOGY LICENSED UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" BASIS. PENN MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF ACCURACY, COMPLETENESS, PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COMMERCIAL UTILITY, NON-INFRINGEMENT OR TITLE.

10. LIMITATION OF LIABILITY

10.1. Limitation of Liability. PENN WILL NOT BE LIABLE TO COMPANY, ITS AFFILIATES, OR SUBLICENSEES, ITS SUCCESSORS OR ASSIGNS, OR ANY THIRD PARTY WITH RESPECT TO ANY CLAIM: ARISING FROM COMPANY'S USE OF THE PENN PATENT RIGHTS, LICENSED PRODUCTS OR ANY OTHER TECHNOLOGY LICENSED UNDER THIS AGREEMENT; ARISING FROM THE DEVELOPMENT, TESTING, MANUFACTURE, USE OR SALE OF LICENSED PRODUCTS; OR FOR LOST PROFITS, BUSINESS INTERRUPTION, OR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND.

11. INDEMNIFICATION

11.1. Indemnification. Company will defend, indemnify, and hold harmless Penn, and its trustees, officers, faculty, agents, employees and students (each, an "*Indemnified Party*"), from and against any and all liability, loss, damage, action, claim, or expense suffered or incurred by the Indemnified Parties, including attorneys' fees and expense (collectively, "*Liabilities*") arising out of or resulting from: (a) the development, testing, use, manufacture, promotion, sale or other disposition of any Penn Patent Rights or Licensed Products by Company, its Affiliates or sublicensees; (b) any material breach of this Agreement by Company or its Affiliates or sublicensees; and (c) the enforcement of this Article 11 by any Indemnified Party. Liabilities include, but are not limited to: (x) any product liability or other claim of any kind related to use by a third party of a Licensed Product that was manufactured, sold or otherwise disposed of by Company, its Affiliates, sublicensees, assignees or vendors or third parties; (y) a claim by a third party that the Penn Patent Rights or the design, composition, manufacture, use, sale or other disposition of any Licensed Product infringes or violates any patent, copyright, trade

secret, trademark or other intellectual property right of such third party; and (z) clinical trials or studies conducted by or on behalf of Company, its Affiliates, sublicensees, assignees or vendors or third parties relating to the Penn Patent Rights or the Licensed Products, such as claims by or on behalf of a human subject of any such clinical trial or study.

11.2. Other Provisions. Company shall not settle or compromise any claim or action giving rise to Liabilities in any manner that imposes any restrictions on obligations on Penn or grants any rights to the Penn Patent Rights or the Licensed Products without Penn's prior written consent. If Company fails or declines to assume the defense of any claim or action within thirty (30) days after notice of the claim or action, then Penn may assume the defense of such claim or action for the account and at the risk of Company, and any Liabilities related to such claim or action will be conclusively deemed a liability of Company. The indemnification rights of the Indemnified Parties under this Article 11 are in addition to all other rights that an Indemnified Party may have at law, in equity or otherwise.

12. INSURANCE

12.1. Coverages. Before any Licensed Product is to be tested on or administered to a living human subject, Company will procure and maintain insurance policies for the following coverages with respect to personal injury, bodily injury and property damage arising out of Company's performance under this Agreement: (a) during the Term, comprehensive general liability, including broad form and contractual liability, in a minimum amount of $2,000,000 combined single limit per occurrence and in the aggregate; (b) prior to the commencement of clinical trials involving Licensed Products, clinical trials coverage in a minimum amount of $2,000,000 combined single limit per occurrence and in the aggregate; and (c) prior to the sale of the first Licensed Product, product liability coverage, in a minimum amount of $3,000,000 combined single limit per occurrence and in the aggregate. Penn may review periodically the adequacy of the minimum amounts of insurance for each coverage required by this Section 12.1, and Penn reserves the right to require Company to adjust the limits accordingly in accordance with customary industry standards. The required minimum amounts of insurance do not constitute a limitation on Company's liability or indemnification obligations to Penn under this Agreement.

12.2. Other Requirements. The policies of insurance required by Section 12.1 will be issued by an insurance carrier with an A.M. Best rating of "A" or better and will name Penn as an additional insured with respect to Company's performance under this Agreement. Company will provide Penn with insurance certificates evidencing the required coverage within thirty (30) days after commencement of each policy period and all renewal periods. Company will use its reasonable best efforts to cause each certificate to provide that the insurance carrier will notify Penn in writing at least thirty (30) days prior to the cancellation or material change in coverage.

13. ADDITIONAL PROVISIONS

13.1. Independent Contractors. The parties are independent contractors. Nothing contained in this Agreement is intended to create an agency, partnership or joint venture between the parties. At no time will either party make commitments or incur any charges or expenses for or on behalf of the other party.

13.2. No Discrimination. Neither Penn nor Company will discriminate against any employee or applicant for employment because of race, color, sex, sexual or affectional preference, age, religion, national or ethnic origin, handicap, or veteran status.

13.3. Compliance with Laws. Company shall comply with all prevailing laws, rules and regulations that apply to its activities or obligations under this Agreement. Company will comply with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the applicable agency of the United States government and/or written assurances by Company that Company shall not export data or commodities to certain foreign countries without prior approval of the agency. Penn does not represent that no license is required, or that, if required, the license will issue.

13.4. Modification, Waiver and Remedies. This Agreement may only be modified by a written amendment that is executed by an authorized representative of each party. Any waiver must be express and in writing. No waiver by either party of a breach by the other party will constitute a waiver of any different or succeeding breach. Unless otherwise specified, all remedies are cumulative.

13.5. Assignment. Company may not assign this Agreement or any part of it, either directly or by merger or other operation of law, without the prior written consent of Penn. Penn will not unreasonably withhold or delay its consent, and will raise any objection to such assignment within thirty (30) days of notice from Company, provided that: (a) at least thirty (30) days before the proposed transaction, Company gives Penn written notice and such background information as may be reasonably necessary to enable Penn to give an informed consent; (b) the assignee agrees in writing to be legally bound by this Agreement; and (c) the assignee agrees in writing to deliver to Penn an updated Development Plan within forty-five (45) days after the closing of the proposed transaction. Any permitted assignment will not relieve Company of responsibility for the performance of any obligation of Company that has accrued at the time of the assignment. Any prohibited assignment will be null and void. Notwithstanding anything above to the contrary, Company may assign this Agreement at any time if the assignee had revenues equal to or greater than one billion dollars ($1,000,000,000) in the fiscal year prior to the assignment.

13.6. Notices. Any notice or other required communications (each, a "*Notice*") must be in writing, addressed to the party's respective Notice Address listed on the signature page, and delivered: (a) personally; (b) by certified mail, postage prepaid return, receipt requested; (c) by recognized overnight courier service, charges prepaid; or (d) by facsimile. A Notice will be deemed received: if delivered personally, on the date of delivery; if mailed, five (5) days after deposit in the United States mail; if sent via

courier, one (1) business day after deposit with the courier service; or if sent via facsimile, upon receipt of confirmation of transmission provided that a confirming copy of such Notice is sent by certified mail, postage prepaid, return receipt requested.

13.7. Severability and Reformation. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions of this Agreement will remain in full force and effect. Such invalid or unenforceable provision will be automatically revised to be a valid or enforceable provision that comes as close as permitted by law to the parties original intent.

13.8. Headings and Counterparts. The headings of the articles and sections included in this Agreement are for convenience only and are not intended to affect the meaning or interpretation of this Agreement. This Agreement may be executed in several counterparts, all of which taken together will constitute the same instrument.

13.9. Governing Law. This Agreement will be governed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to the conflict of law provisions of any jurisdiction.

13.10. Dispute Resolution. If a dispute arises between the parties concerning any right or duty under this Agreement, then the parties will confer, as soon as practicable, in an attempt to resolve the dispute. If the parties are unable to resolve the dispute amicably, then the parties will submit to the exclusive jurisdiction of, and venue in, the state and Federal courts located in the Eastern District of Pennsylvania with respect to all disputes arising under this Agreement.

13.11. Integration. This Agreement with its Exhibits and the Equity Documents, and the RTS License Agreement, contain the entire agreement between the parties with respect to the Penn Patent Rights and the License and supersede all other oral or written representations, statements or agreements with respect to such subject matter, including but not limited to any term sheet.

Each party has caused this Agreement to be executed by its duly authorized representative.

THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA

By: /s/ Louis P. Berneman
Name: Louis P. Berneman
Title: Managing Director, Center for Technology Transfer

Address: Center for Technology Transfer
University of Pennsylvania
3160 Chestnut Street, Suite 200
Philadelphia, PA 19104-6283
Attention: Managing Director

Required copy to: Office of General Counsel
University of Pennsylvania
133 South 36th Street, Suite 300
Philadelphia, PA 19104-3246
Attention: General Counsel

ACUITY PHARMACEUTICALS, INC.

By: /s/ Dale R. Pfost
Name: Dale R. Pfost
Title: President and Chief Executive Officer

Acuity Pharmaceuticals, Inc.
C/O Center for Technology Transfer
University of Pennsylvania
3160 Chestnut Street, Suite 200
Philadelphia, PA 19104-6283
Attention: Dale R. Pfost

Drinker Biddle & Reath LLP
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103-6996
Attention: Neil K. Haimm, Esq.

EXHIBIT A

LIST OF APPLICATIONS/PENN DOCKET NUMBERS

EXHIBIT 10.15

First Amendment to the **License Agreement**
between the
The Trustees of the University of Pennsylvania and **Acuity Pharmaceuticals, Inc.**

This first amendment (this "First Amendment") is made by and between Acuity Pharmaceuticals Inc., a corporation organized under the laws of the State of Delaware and with offices located at the Port of Technology, 3701 Market Street, Philadelphia, PA 19104 ("Company"), and the Trustees of the University of Pennsylvania, a Pennsylvania nonprofit corporation, with offices located at 3160 Chestnut Street, Suite 200, Philadelphia PA 19104 ("Penn"). This Amendment is effective on 1 August 2003.

BACKGROUND

A. Penn and Company entered into an exclusive license agreement (the "Original Agreement"), pertaining to Penn Dockets P2928, P2974, P3009, P3069, P3075, P3087, and P3114 for technology related to RNA interference developed by Dr. Michael Tolentino, Mr. Samuel Reich, and Dr. Enrico M. Surace of Penn's School of Medicine, Department of Ophthalmology and having an effective date of March 31, 2003;

B. Penn and Company have now reached an agreement to amend certain terms and to include additional technologies, which are expressed in this First Amendment; and

C. It is the intent of both parties to execute this First Amendment. The Original Agreement as amended by this First Amendment will be referred to as the "Agreement".

NOW THEREFORE, in consideration of the promises and covenants contained in this First Amendment and intending to be legally bound, the parties agree to:

1. Unless otherwise defined, the definitions used in this First Amendment are the same as those used in the Original Agreement. No other meanings are implied.

2. To Exhibit A of the Original Agreement, the following dockets shall be added:

   P3158: RNAi Therapy for Glaucoma

   P3159: Anti-HSV RNAi Therapy for Herpes Infection

   P3183: Combined Therapy for AMD or Diabetic Retinopathy (Cand5 or Another Anti-Angiogenic siRNA)

3. Section 2.3 of the Original Agreement is deleted in its entirety and replaced by the following:

2.3. Diligence Events. The Company will use commercially reasonable efforts to achieve each of the diligence events by the applicable completion date listed in the table below for the first product to be commercialized by the Company pursuant to this Agreement.

DILIGENCE EVENT	COMPLETION DATE
Delivery to Penn of a preliminary business plan	June 30, 2003
Raising at least an aggregate of $5 Million in equity investment capital by Company from qualified investors	December 31, 2004
Filing of IND for first Licensed Product	December 31, 2005
Initiation of Phase II clinical trials for first Licensed Product	December 31, 2007
Initiation of Phase III clinical trials for first Licensed Product	December 31, 2010
First commercial Sale of first Licensed Product	December 31, 2013

4. No other terms of the Original Agreement are modified by this First Amendment. The Original Agreement and this First Amendment are the entire agreement between the parties with respect to the subject matter of the Agreement as so amended.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused this First Amendment to be executed by their duly authorized representatives.

THE TRUSTEES OF THE
UNIVERSITY OF PENNSYLVANIA

By: /s/ Louis P. Berneman, Ed. D
Louis P. Berneman, Ed. D
Managing Director
Center for Technology Transfer
Date: 11/19/03

ACUITY PHARMACEUTICALS, INC.

By: /s/ Dale R. Pfost, Ph.D.
Dale R. Pfost, Ph.D.
President and CEO
Date: 19 Nov 03

PENN/ACUITY
Amendment for adding additional dockets to the Acuity License
Effective Date: 1 August 2003

EXHIBIT 10.16

First Amendment to the **License Agreement**
between the
The Trustees of the University of Pennsylvania and **Acuity Pharmaceuticals, Inc.**

This first amendment (this "First Amendment") is made by and between Acuity Pharmaceuticals Inc. a corporation organized under the laws of the State of Delaware and with offices located at the Port of Technology, 3701 Market Street Philadelphia, PA 19104 ("Company"), and the Trustees of the University of Pennsylvania, a Pennsylvania nonprofit corporation, with offices located at 3160 Chestnut Street, Suite 200, Philadelphia PA 19104 (" Penn"). This Amendment is effective on 1 August 2003.

BACKGROUND

A. Penn and Company entered into an exclusive license agreement (the "Original Agreement"), pertaining to Penn Docket N2427 for technology related to RNA interference developed by Dr. Alan Gewirtz of Penn's School of Medicine, Department of Medicine, and having an effective date of March 31, 2003;

B. Penn and Company have now reached an agreement to amend certain terms, which are expressed in this First Amendment; and

C. It is the intent of both parties to execute this First Amendment. The Original Agreement as amended by the First Amendment will be referred to as the "Agreement".

NOW THEREFORE, in consideration of the promises and covenants contained in this First Amendment and intending to be legally bound, the parties agree to:

1. Unless otherwise defined, the definitions used in this First Amendment are the same as those used in the Original Amendment. No other meanings are implied.

2. Section 2.3 of the Original Agreement is deleted in its entirety and replaced by the following:

2.3. Diligence Events.

(a) The Company will use commercially reasonable efforts to achieve, or cause to be achieved, each of lhe diligence events by the applicable completion date listed in the table below for the first product to be commercialized by the Company pursuant to this Agreement.

DILIGENCE EVENT	COMPLETION DATE
Filing of IND for first Licensed Product	December 31, 2005
Initiation of Phase II clinical trials for first Licensed Product	December 31, 2007
Initiation of Phase III clinical trials for first Licensed Product	December 31, 2010
First commercial Sale of first Licensed Product	December 31, 2013

(b) The Company will use commercially reasonable efforts to; (i) deliver to Penn a preliminary business plan by June 30, 2003 and (ii) raise at least an aggregate of $5 Million in equity investment capital from qualified investors by December 31, 2004.

3. No other terms of the Original Agreement are modified by this First Amendment. The Original Agreement and this First Amendment are the entire agreement between the parties with respect to the subject matter of she Agreement as so amended.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused this First Amendment to the Original Agreement to be executed by their duly authorized representatives.

THE TRUSTEES OF THE
UNIVERSITY OF PENNSYLVANIA

By: /s/ Louis P. Berneman, Ed. D
Louis P. Berneman, Ed. D
Managing Director
Center for Technology Transfer
Date: 11/18/03

ACUITY PHARMACEUTICALS, INC.

By: /s/ Dale R. Pfost, Ph.D.
Dale R. Pfost, Ph.D.
President and CEO
Date: 19 Nov 03

PENN/ACUITY
Diligence Amendment to the Gewirtz Technology License
Effective Date: 1 August 2003

EXHIBIT 10.17

AMENDED AND RESTATED SUBORDINATION AGREEMENT

AMENDED AND RESTATED SUBORDINATION AGREEMENT (this "***Agreement***"), dated as of March 27, 2007, by and among The Frost Group, LLC, a Florida limited liability company (***"Frost LLC"*** or the "***Junior Creditor***"), Horizon Technology Funding Company LLC (the "***Senior Creditor***") and Acuity LLC, a Delaware limited liability company formerly known as e-Acquisition Company II-B, LLC (***"Acuity"***"), and eXegenics Inc., a Delaware corporation ("***eXegenics***" and with Acuity, the "***Borrowers***").

WHEREAS, Acuity Pharmaceuticals, Inc. ("***Old Acuity***") borrowed funds from the Junior Creditor pursuant to the terms of that certain Subordinated Note and Security Agreement dated as of January 11, 2007, by Old Acuity to Frost LLC and that certain Master Agreement dated as of January 11, 2007 by and between Old Acuity, Frost LLC and Froptix Corporation, a Florida corporation and granted a security interest in all of Old Acuity assets and property as set forth in the Note and Security Agreement;

WHEREAS, Old Acuity has borrowed funds from the Senior Creditor pursuant to the terms of that certain Venture Loan and Security Agreement, dated as of September 14, 2005, by and between Old Acuity and the Senior Creditor and the Secured Promissory Note issued to Senior Creditor by Old Acuity on September 14, 2005 and granted Senior Creditor a security interest in all of Old Acuity's assets and property as set forth in the Senior Debt Documents;

WHEREAS, on March 27, 2007, Old Acuity, Froptix Corporation, eXegenics, Acuity and e-Acquisition Company I-A, LLC entered into a Merger Agreement and Plan of Reorganization (the "Merger Agreement"), pursuant to which Old Acuity was merged with and into Acuity, with Acuity surviving the merger as a wholly-owned subsidiary of eXegenics (the "***Acuity Merger***");

WHEREAS, concurrently with the execution of this Agreement, Acuity and eXegenics entered into an Amended and Restated Venture Loan and Security Agreement (the "***Senior Loan Agreement***"), dated as of March 27, 2007 by and between Acuity, eXegenics and the Senior Creditor and the Secured Promissory Note issued to Senior Creditor by Acuity and eXegenics on March 27, 2007 (with the Senior Loan Agreement, the "***Senior Debt Documents***") and granted Senior Creditor a security interest (the "***Senior Security Interest***") in all of eXegenics' and Acuity's assets and property as set forth in the Senior Debt Documents;

WHEREAS, concurrently with the execution of this Agreement, eXegenics, Acuity and the Junior Creditor are entering into that certain Amended and Restated Subordinated Note and Security Agreement dated as of March 27, 2007, (the ***"Note and Security Agreement"***) and that certain Credit Agreement dated as of March 27, 2007 (the ***"Credit Agreement"*** and, collectively with the Note and Security Agreement, the "***Junior Debt Documents***"), and granted a security interest (the "***Junior Security Interest***") in all of eXegenics' assets and property as set forth in the Note and Security Agreement;

NOW, THEREFORE, in consideration of the mutual promises, representations, warranties, covenants and conditions set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Subordination of Security Interest. The Junior Creditor hereby subordinates its Junior Security Interest to and in favor of the Senior Security Interest. Further, notwithstanding the respective dates of attachment or perfection of the Junior Security Interest and the Senior Security Interest, the Senior Security Interest shall at all times be prior and superior to the Junior Security Interest.

2. Payment Obligations. All Obligations (as defined in the Credit Agreement) of the Borrowers to Junior Creditor under the Junior Debt Documents (the "***Junior Obligations***") are subordinated in right of payment to all payment obligations under the Senior Loan Agreement (the "***Senior Obligations***"). Nothing herein shall be deemed to subordinate, waive or restrict the performance of the obligations of eXegenics to issue capital stock of eXegenics upon exercise or conversion of any warrants or notes issued at any time by eXegenics to the Junior Creditor or the other obligations of eXegenics to Junior Creditor pursuant to the Credit Agreement or Merger Agreement that are unrelated to the Junior Obligations. Except as set forth herein, any payment of any amounts or other consideration by eXegenics to Junior Creditor in respect of the Junior Obligations or otherwise pursuant to the provisions of the Credit Agreement relating to such Junior Obligations shall be restricted hereby.

3. Covenants. Subject to and except as set forth in Section 4 below, the Junior Creditor will not: (a) demand or receive from either of the Borrowers (and neither of the Borrowers will pay to the Junior Creditor) all or any part of the Junior Obligations, by way of payment, prepayment, setoff, lawsuit or otherwise; (b) exercise any right or remedy, or take any enforcement action regarding any property or assets of either of the Borrowers; or (c) commence, or cause to be commenced, prosecute or participate in any administrative, legal or equitable action against either of the Borrowers or the Collateral (as defined in the Senior Loan Agreement), provided that, notwithstanding the foregoing, the Junior Creditors shall be permitted to demand performance of the Junior Obligations or commence action against the Borrowers to the extent necessary to preserve their rights against the Borrowers under applicable law but it shall not be permitted to receive payment from the Borrowers or foreclose on any Collateral until such time as the Senior Obligations have been paid in full. The Borrowers expressly agrees that they shall not assert as a defense to the Junior Obligations, the passage of time, estoppel, laches or any statute of limitations to the extent that the exercise of any rights or remedies by the Junior Creditor was precluded by this Agreement.

4. Application of Payments to the Junior Creditor. The Junior Creditor shall promptly deliver to the Senior Creditor in the form received (except for endorsement or assignment by the Junior Creditor where required by the Senior Creditor) for application to the Senior Obligations any payment, distribution, security or proceeds received by the Junior Creditor with respect to the Junior Obligations other than in accordance with this Agreement,

including without limitation Section 2. Notwithstanding anything to the contrary in this Agreement, under applicable law or otherwise, the Junior Creditor agrees that it shall not directly or indirectly contest the validity, enforceability or priority of any lien securing the Senior Obligations.

5. Enforcement of Obligations. In the event of either of the Borrowers' insolvency, reorganization or any case or proceeding under any bankruptcy or insolvency law or laws relating to the relief of debtors, these provisions shall remain in full force and effect, and the Senior Obligations shall be paid in full before any payment is made with respect to the Junior Obligations. Further, notwithstanding anything to the contrary contained herein, in the event the Junior Creditor exercises rights and remedies against either of the Borrowers, the Junior Creditor shall remit the proceeds of any such enforcement actions to the Senior Creditor until all Senior Obligations are paid in full.

6. Appointment. Until the Senior Obligations are fully paid in cash, the Junior Creditor irrevocably appoints the Senior Creditor as the Junior Creditor's attorney in fact, and grants to the Senior Creditor a power of attorney with full power of substitution, in the name of the Junior Creditor or in the name of the Senior Creditor, for the use and benefit of the Senior Creditor, without notice to the Junior Creditor, in any bankruptcy, insolvency or similar proceeding involving either of the Borrowers to file the appropriate claim or claims in respect of the Junior Obligations on behalf of the Junior Creditor if the Junior Creditor does not do so prior to 15 days before the expiration of the time to file claims in such proceeding.

7. Financing Statements. By the execution of this Agreement, the Junior Creditor hereby authorizes the Senior Creditor to amend any financing statements filed by the Junior Creditor or its agent on its behalf against the Borrowers as follows: "In accordance with a certain Subordination Agreement by and among the Secured Party, the Debtor and Horizon Technology Funding Borrower LLC, the Secured Party has subordinated any security interest or lien that Secured Party may have in any property of the Debtor to the security interest of Horizon Technology Funding Borrower LLC in all assets of the Debtor, notwithstanding the respective dates of attachment or perfection of the security interest of the Secured Party and Horizon Technology Funding Borrower LLC."

8. Amendment to Junior Debt Documents. No amendment of the documents evidencing or relating to the Junior Obligations shall directly or indirectly modify the provisions of this Agreement in any manner which might terminate or impair the subordination of the Junior Obligations or the subordination of the Junior Security Interest that the Junior Creditor may have in any property of the Borrowers.

9. Disgorgement. If, at any time after payment in full of the Senior Obligations any payments of the Senior Obligations must be disgorged by the Senior Creditor for any reason (including, without limitation, the bankruptcy of either of the Borrowers) and Junior Creditor shall have received any payments with respect to the Junior Obligations, this Agreement and the relative rights and priorities set forth herein shall be reinstated as to all such disgorged payments as though such payments had not been made and the Junior Creditor shall immediately pay over to the Senior Creditor for application to the Senior Obligations, all payments received with

respect to the Junior Obligations to the extent that such payments would have been prohibited hereunder. At any time and from time to time, without notice to the Junior Creditor, the Senior Creditor may take such actions with respect to the Senior Obligations as the Senior Creditor, in its sole discretion, may deem appropriate, including, without limitation, extending the time of payment, increasing applicable interest rates, renewing, compromising or otherwise amending the terms of any documents affecting the Senior Obligations and any collateral securing the Senior Obligations, and enforcing or failing to enforce any rights against either of the Borrowers or any other person. No such action or inaction shall impair or otherwise affect the Senior Creditor's rights hereunder.

10. Term. The subordinations, agreements and priorities set forth hereinabove shall remain in full force and effect regardless of whether any party hereto in the future seeks to rescind, amend, terminate or reform, by litigation or otherwise, its respective agreements with either of the Borrowers. This Agreement is effective from the date hereof until the earlier of (i) payment in full of the Senior Obligations and (ii) release by the Junior Creditor of the Junior Security Interest.

11. Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties.

12. Entire Agreement. This Agreement and the schedules referred to herein constitute the entire agreement among the parties and supersede all prior communications, representations, understandings and agreements of the parties with respect to the subject matter hereof. All schedules hereto are hereby incorporated herein by reference. Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights, remedies, obligations or liabilities under or by reason of this Agreement.

13. General Interpretation. The terms of this Agreement have been negotiated by the parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this Agreement. No rule of strict construction will be applied against any person or entity.

14. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF **DELAWARE**, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH OF SENIOR CREDITOR AND JUNIOR CREDITOR HEREBY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF **DELAWARE**. SENIOR CREDITOR AND JUNIOR CREDITOR HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED

HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

15. Counterparts; Facsimile Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same document. This Agreement may be executed by facsimile signatures.

16. Section Headings. The section headings are for the convenience of the parties and in no way alter, modify, amend, limit or restrict the contractual obligations of the parties.

17. Notices. All notices required or permitted under this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed telex or facsimile if sent during normal business hours of the recipient, if not, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All such communications shall be sent to the Senior Creditor at 76 Batterson Park Road, Farmington, CT 06032, Attention: Legal Department and to the Junior Creditor at 4400 Biscayne Blvd., 15th Floor, Miami, FL 33137, Attention: Steve Rubin, Esq., or at such other address as the Senior Creditor or the Junior Creditor may designate by ten (10) days advance written notice to the other parties hereto.

18. Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), with the written consent of the Senior Creditor and the Junior Creditor.

19. Pronouns. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neutral forms, and the singular form of nouns and pronouns shall include the plural, and vice versa.

20. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

[Signatures on following pages]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the date first written above.

HORIZON TECHNOLOGY FUNDING COMPANY LLC
By: Horizon Technology Finance, LLC, its sole member

By: /s/ Gerald A. Michaud
Name: Gerald A. Michaud
Title: Managing Member

THE FROST GROUP, LLC

By: /s/ Steven D. Rubin
Name: Steven D. Rubin
Title: Vice President

ACUITY PHARMACEUTICALS, LLC.

By: /s/ Dale R. Pfost
Name: Dale R. Pfost
Title: President

EXEGENICS INC.

By: /s/ John Paganelli
Name: John Paganelli
Title: Interim Chief Executive Officer

EXHIBIT 10.18

EXEGENICS INC.
4400 Biscayne Blvd
Suite 900
Miami, Florida 33137

March 29, 2007

Samuel J. Reich
320 Brookway Rd
Merion Station, PA 19066

Dear Sam:

I am sending you this letter (this "Employment Letter") to memorialize the understanding between you and eXegenics Inc. (the "Company") regarding your employment terms with the Company and its wholly owned subsidiary, Acuity Pharmaceuticals, LLC (the "Subsidiary"). This Employment Letter sets forth the terms of your employment with the Company as approved by the Company's board of directors. You may indicate your agreement with these terms by signing and dating the enclosed duplicate original of this Employment Letter and returning the same to me.

1. Position. You will serve the Company and Acuity as its Executive Vice President and you will have responsibilities and obligations which are commensurate with this position. You will report to the Chief Executive Officer of the Company. You will also serve the Subsidiary in the same capacity, provided that no additional compensation or benefits will be provided for any services provided to any affiliate of the Company, and notwithstanding anything to the contrary set forth herein, a termination of employment or Change in Control at the Subsidiary level shall not trigger any payments or acceleration of any vesting of securities hereunder.

2. Place of Employment. The Company will have its principal place of business in and around the city of Miami in the State of Florida. When reasonably requested by the Company, you will be required to relocate to the Miami area to be closer to the Company's principal office. The exact timeframe for your relocation will be determined in the coming weeks and you will be afforded a reasonable period of time to complete your relocation. Prior to the date of your relocation, you will be required to make yourself available in Miami when reasonably requested by the Company. It is contemplated that you will spend up to ten (10) days per month in Miami prior to your relocation. You will be reimbursed for your documented travel expenses prior to the time for relocation.

3. Reimbursement for Relocation. When the Company requires that you relocate to the Miami area, you will be reimbursed for your documented relocation expenses (which will include moving expenses, travel expenses for you and your family, temporary housing for up to three months and customary closing costs (excluding points,

concessions and pre-paid expenses such as insurance, taxes, homeowner's warranties, etc.) for your purchase of a residence in the Miami area), which will be grossed up for taxes. If, within one year from the date of your relocation, your employment with the Company is terminated for Cause or if you voluntarily terminate your employment with the Company other than for Good Reason, you will be required to refund all of the relocation monies paid by the Company, including the tax gross-up.

4. Term of Employment. The term of your employment with the Company (the "Employment Period") shall commence on the date of this Employment Letter (the "Effective Date") and, unless earlier terminated in accordance with the terms of the Employment Letter, shall end on the first anniversary of the Effective Date. Except as provided in the Employment Letter, on the first anniversary of the Effective Date and on each subsequent anniversary thereof, the Employment Period shall be automatically extended for one additional year unless either you or the Company shall have given to the other party written notice of non-extension at least thirty (30) days prior to such anniversary.

5. Salary. You will be paid a salary at the annual rate of $210,000, payable in monthly installments in accordance with the Company's prevailing payroll practices for executive employees. This salary will be subject to adjustment pursuant to the Company's employee compensation policies in effect from time to time. All forms of compensation from the Company will be subject to reduction to reflect applicable withholding and payroll taxes.

6. Benefits. You will be entitled to participate in such benefit programs as are generally made available to other executives of the Company. If you are then an employee in good standing you will be entitled to four (4) weeks paid vacation each year and sick days and other holidays in accordance with the Company's then prevailing policies to be established from time to time for executive employees. Unused vacation time will not accrue beyond, and must be used within, three months of the end of each year.

7. Bonus. Within ten days of the Effective Date, you will be paid a bonus of $30,000, which represents your bonus for fiscal year 2006. Going forward, you will be eligible for an annual merit bonus, potentially to be paid each year, in accordance with the procedures established by the Company for executive employees. Your targeted bonus for the first year will be equal to approximately 30% of your base salary and will be based on criteria established from time to time by the Company. These criteria will include, but not be limited to, your accomplishments against set objectives, the Company's success and your general contributions to the Company's success, the general fiscal position of the Company and additional factors to be deemed appropriate by the Company's senior management and board of directors. Payment of any bonus shall be at the sole discretion of the Company. The bonus you receive may be below or above the target or may not be paid at all. Any bonus paid for a period of time which is less than 12 months will be paid *pro rata* for such time period. You must be an employee in good standing at the time of

any potential payment. Any bonus, if paid, will be paid prior to the end of the first fiscal quarter following the fiscal year for which a bonus is to be paid.

8. Reimbursement for Travel Expenses. The Company shall reimburse you for approved travel and other out-of-pocket expenses incurred by you in the course of your employment consistent with applicable procedures in place at any time.

9. Stock Options. Subject to (i) the adoption and approval of an equity incentive plan with sufficient authorized shares by the stockholders of the Company, and (ii) the approval of the Compensation Committee of the Board of Directors of the Company, you shall be granted an option to purchase 500,000 shares of the Company's common stock (subject to adjustment in the event of any stock splits or reverse stock splits) . The exercise price per share for each new option grant will be equal to the fair market value per share on the date the option is granted. The options will be subject to the terms and conditions contained in a stock option agreement to be entered into by you and the Company prior to the grant. The options shall vest in forty eight (48) monthly installments from the date of grant.

10. Termination without Cause and Resignation for Good Reason or Non-extension of Employment Before One Year Anniversary. The Company may terminate your employment hereunder without "Cause." If your employment is terminated by the Company without "Cause," you terminate your employment with the Company for "Good Reason" or the Company delivers to you a notice of non-extension, in accordance with Section 4 hereof, prior to the one-year anniversary of the Effective Date (which initial non-renewal shall be treated as a termination for purposes of this Section 10), the Company shall pay you all amounts accrued but unpaid as of the effective date of such termination. In addition, you shall continue to receive your then applicable base salary and benefits for twelve (12) months thereafter (the "Severance Period"). Any outstanding equity awards granted to you which would have vested during the Severance Period shall vest automatically upon such termination and all vested equity awards shall be exercisable for one year from the effective date of termination. All unvested equity awards shall be forfeited. In order to receive the severance payments set forth in this Section 10, you will be required to enter into a customary separation and release agreement with the Company which will include the extension of the non-competition provision set forth in Section 12 during the Severance Period. Such separation agreement shall provide that (i) any and all obligations of the Company to pay you accrued salary, bonus or benefits shall survive and shall not be released or waived by you, (ii) any release shall not restrict or adversely affect your ability to exercise any vested stock options or otherwise infringe upon your ownership of any the Company securities, and (iii) you shall not be required to release or waive any rights that you may have to be indemnified by Acuity or the Company (including any rights to advance reimbursement for costs or expenses) pursuant to any provision in Acuity's or the Company's certificate of incorporation, bylaws or as may be otherwise provided for by law or contract.

As used herein, “Good Reason” shall mean (i) any action by the Company which results in any diminution in your salary or reporting requirements (ii) any action by the Company which results in a material diminution in your position, authority, duties or responsibilities contemplated by this Employment Letter, or (iii) material breach by the Company of its obligations under this Employment Letter or (iv) the Company’s requiring you to be based at any office or location other than a location within 30 miles from the Company’s offices in Philadelphia, or within 30 miles from the Company’s offices in Miami, except for travel reasonably required in connection with the performance of the your responsibilities hereunder.

If you elect to terminate your employment for Good Reason, you shall first give the Company written notice thereof, including reasonable evidence to support your finding of Good Reason and a period of thirty (30) days (the “Good Reason Notice Period”) from the date of such notice to cure such breach. If such breach is not cured by the Company by the end of the Good Reason Notice Period with such cure being communicated to you in writing, such termination shall be effective upon the first day after the expiration of the Good Reason Notice Period.

11. Termination for Cause. The Company shall be permitted to terminate your employment hereunder for Cause (as defined below). In the event of such termination, your compensation and benefits shall cease as of the effective date of termination and the Company shall pay you all amounts accrued but unpaid as of the date of such termination. The Company shall not thereafter be obligated to make any further payments to you. In addition all outstanding equity awards granted to you, vested or unvested, shall immediately be terminated.

As used herein, “Cause” shall mean (i) your commission of fraud in connection with your employment or intentional theft, misappropriation or embezzlement of the Company’s funds; (ii) your conviction of or the entering of a guilty plea or plea of no contest with respect to, a felony, the equivalent thereof, or any other crime with respect to which imprisonment is the punishment; (iii) your material breach of your obligations under this Employment Letter,; (iv) your willful violation of any express direction or requirement established by the Chief Executive Officer or Board of Directors in good faith ; (v) your incompetence or misconduct in the performance of, or neglect of, your duties hereunder which is materially detrimental to the Company ; (vii) your use of alcohol or other drugs which interfere with the performance of your duties, or the conviction of or your entering of a guilty plea or plea of no contest with respect to the use of any illegal drugs or narcotics.

If the Company elects to terminate your employment for Cause pursuant to clauses (iii), (iv), and (v) of the definition of “Cause” and the action or inaction prompting such termination is capable of cure, the Company shall first give you written notice thereof, including a description of the evidence upon which the

Company has relied to support such finding and, a period of thirty (30) days from the date of such notice to cure the action or inaction giving rise to the written notice.

12. Disability. If you are incapacitated by accident, sickness or otherwise so as to render you, for any period totaling 60 or more days during any consecutive twelve-month period, or in the reasonable opinion of the Company's board of directors, is mentally or physically incapable of performing the services required of you under this Employment Letter, the Company may terminate your employment immediately following such 60-day period by giving you written notice specifying the effective date of termination. In the event of such a termination, the Company shall pay to you all amounts accrued but unpaid under this Employment Letter as of the effective date of your termination and thereafter shall not have any further obligation or liability under this Employment Letter. In addition, all restricted shares, options and other securities shall remain outstanding subject to their terms, except that all equity awards shall be exercisable by you for a period of one (1) year following termination pursuant to this Section 12.

13. Death. Your employment with the Company shall automatically terminate in the event of your death. In the event of such a termination, the Company shall pay to your estate or legal representative all amounts accrued but unpaid under this Employment Letter as of the effective date of your termination and thereafter shall not have any further obligation or liability under this Employment Letter. In addition, all restricted shares, options and other securities shall remain outstanding subject to their terms, except that all equity awards shall be exercisable by the executors or administrators of your estate or by the your beneficiaries for a period of one (1) year following termination pursuant to this Section 13.

14. Non-Competition Provision. During the term of your employment with the Company and for one-year thereafter(so long Acuity is in compliance with its contractual obligations, if any, under this Letter Agreement to provide you with any severance payments or benefits following a termination event) you agree that you shall not engage or participate directly or indirectly in any business which is, or as a result of your engagement or participation would become, competitive with any aspect of the business of the Company and any specific applications or technologies in which the Company has initiated significant plans to develop (the "Competing Business"), such business currently being the development and commercialization of therapeutic compounds for the treatment of ophthalmic disorders. During this period, you agree not to become a stockholder, partner, owner, officer, director or employee or agent of, or a consultant to or give financial or other assistance to, any person or entity engaged in any such Competing Business (other than ownership of 3% or less of the outstanding securities of any publicly traded company).

15. Continuing Obligations after Termination. You hereby acknowledge and agree that you have entered into an Inventions and Proprietary Information Agreement, and that the terms, conditions and covenants contained in such agreement remain in full force and effect and is not in any way modified by the execution of this Letter Agreement.

16. Termination following a Change in Control. In the event that the Company shall terminate your employment hereunder without Cause or you shall termination your employment hereunder for Good Reason within one year following a "Change in Control" of the Company, then, in addition to all of the payments and benefits provided by Section 10 of this Employment Letter, all outstanding equity awards which are unvested as of such termination date shall automatically become vested and you shall have a period of one (1) year from such date of termination to exercise any such equity awards.

For purposes of this Section 16, a "Change in Control" shall be deemed to have occurred if any person other than the Frost Group, LLC and its affiliates, is or becomes the beneficial owner of 60% or more of the combined voting power of the Company's then outstanding securities; or the stockholders of the Company approve a merger or consolidation of the Company with any other unrelated entity (which would not result in the voting securities of the Company outstanding immediately prior thereto continuing to represent more than 50% of the combined voting power of the Company or such surviving entity outstanding immediately after such merger or consolidation) or the sale of all or substantially all of the assets of the Company to any other unrelated entity.

17. Your Termination Right. You may terminate this Employment Letter at any time for any reason upon at least 30 days' written notice to the Company. In the event of such a termination, the Company shall pay to you all amounts accrued but unpaid under this Employment Letter as of the effective date of your termination and thereafter shall not have any further obligation or liability under this Employment Letter. In addition, all restricted shares, options and other securities shall remain outstanding subject to their terms, except that all equity awards shall be exercisable by you for a period of three (3) months following termination pursuant to this Section 17. All unvested equity awards shall be forfeited. Upon such a termination, the provisions of this Letter Agreement, including Sections 14 and 15, shall remain in full force and effect.

18. Outside Activities. While you render services to the Company, you will not engage in any other gainful employment, business or activity without the written consent of the Company. While you render services to the Company, you also will not assist any person or organization in competing with the Company, in preparing to compete with the Company or in hiring any employees of the Company.

19. Amendment and Governing Law. This Employment Letter may not be amended or modified except by an express written agreement signed by you and a duly authorized officer of the Company. The terms of this Employment Letter and the resolution of any disputes will be governed by the laws of the State of Florida.

This Employment Letter contains all of the terms of your employment with the Company and supersede any prior understandings or agreements, whether oral or written, between you and Acuity Pharmaceuticals, Inc. or the Company. You may indicate your agreement with these terms and accept this offer by signing and dating the enclosed duplicate original of this Employment Letter and returning them to me.

Very truly yours,

/s/ Phillip Frost

Phillip Frost, M.D.
Chief Executive Officer and Chairman

ACCEPTED AND AGREED TO:

/s/ Samuel J. Reich

Name: **Samuel J. Reich**

Date: _____

EXHIBIT 10.19

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "**Agreement**") is made as of September 25, 2004 (the "**Effective Date**"), by and between Acuity Pharmaceuticals, Inc., a Delaware corporation (the "**Company**"), and Dale R. Pfost ("**Executive**").

WHEREAS, the Company and Executive were previously parties to that certain Employment Agreement dated as of March 27, 2003 (the "**Original Employment Agreement**");

WHEREAS, on September 24, 2004, the Company issued shares of its Series B Convertible Preferred Stock (the "**Series B Shares**") to a group of investors (the "**Investors**") pursuant to a Series B Preferred Stock Purchase Agreement (the "**Purchase Agreement**");

WHEREAS, to satisfy a condition precedent to the Investors' obligations under the Purchase Agreement, the Company and Executive entered into a Termination Agreement and Release (the "**Termination Agreement**"), pursuant to which, among other things, (i) the Company agreed to issue to Executive 100,000 Series B Shares (the "**Executive Shares**"), a warrant (the "**Executive Warrant**") exercisable for the purchase of up to 12,500 shares of the Company's Common Stock (the "**Common Stock**"), an option exercisable for the purchase of up to 141,000 Series B Shares and an option exercisable for the purchase of up to 43,500 shares of Common Stock (the "**Executive Options**"), (ii) the Original Employment Agreement was terminated and (iii) the Company and Executive agreed to enter into a new employment agreement upon the terms and subject to the conditions contained in the Termination Agreement; and

WHEREAS, the Company and Executive desire to enter into this Agreement to comply with the terms and conditions of the Termination Agreement and to set forth the terms and conditions of Executive's employment by the Company and the rights and obligations of the parties upon termination of such employment.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Employment.** The Company shall employ Executive as its President and Chief Executive Officer, and Executive accepts such employment and agrees to remain in the employ of the Company, upon the terms and conditions set forth in this Agreement during the Employment Period (as defined below). Executive shall report directly to the Board of Directors of the Company (the "**Board**"). From the Effective Date through the first anniversary thereof, Executive shall serve as the Chairman of the Board.

2. **Performance of Duties.**

(a) During his employment by the Company, Executive shall devote his best efforts and his entire business time, ability and attention to the business affairs of the Company and shall faithfully and efficiently perform such duties, consistent with the stature and responsibility of his position, as may be assigned to him from time to time by the Board.

(b) Notwithstanding any provision herein to the contrary, Executive shall not be precluded from devoting reasonable periods of time required for serving as a member of no more than two committees or advisory boards or boards of directors of companies or organizations which have been approved by the Board, so long as such memberships or activities do not interfere with the performance of Executive's duties hereunder and are not directly or indirectly competitive with, nor contrary to, the business or other interests of the Company. Such approval shall not be unreasonably denied and shall be provided to Executive within ten (10) business days of the actual receipt by the Company of such request. Failure by the Company to respond to the Executive within ten (10) business days of the actual receipt by the Company of such request shall be deemed approval of such request. The Company approves of the Executive's current outside activities, which are listed on Exhibit "A" attached hereto.

3. **Term of Employment.** The term of Executive's employment (the "**Employment Period**") shall commence on the Effective Date and, unless earlier terminated in accordance with the terms hereof, shall end on September 24, 2006. Except as hereinafter provided, on the second anniversary of the Effective Date and on each subsequent anniversary thereof, the Employment Period shall be automatically extended for one additional year unless either party shall have given to the other party written notice of non-extension at least thirty (30) days prior to such anniversary. If written notice of non-extension is given as provided above, the Executive's employment under this Agreement shall terminate on the last day of the Employment Period (as it may be extended pursuant hereto).

4. **Base Salary and Benefits.**

(a) The Company agrees to pay Executive an annual salary in the amount of $265,000 per annum, with such salary to be reviewed (but not decreased) annually by the Board or an appropriate committee thereof (such salary, as the same may be adjusted from time to time, is hereinafter referred to as the "**Base Salary**"), payable in accordance with standard payroll practices of the Company. Base Salary shall be considered by the Board for increase based upon performance and other considerations as appropriately determined by the Board, including without limitation performance assessment, market assessment for comparable executive and employment terms and awards as may be deemed appropriate from time to time. The Board's first annual review of the Executive to consider Executive's Base Salary shall take place no later than the end of the calendar year 2005. At this review, the Board will consider the performance of Executive for the last quarter of year 2004 and for calendar year 2005.

(b) The Company shall reimburse Executive for all reasonable out-of-pocket expenses incurred by him in the course of performing his services, duties and responsibilities under this Agreement in a manner that is consistent with the Company's policies in effect from time to time (including business travel policies); provided that Executive shall furnish to the Company reasonably adequate records and documentary evidence of such expenses. The Company shall reimburse Executive for his legal fees incurred in connection with this Agreement up to a maximum of $3,000.

(c) Executive shall be entitled to participate in any health benefit plan, retirement, supplemental income or benefit plans which the Company in its sole discretion sponsors for the members of senior management generally.

(d) Executive shall be entitled to four weeks of compensated vacation time each year, in addition to Company recognized holidays and sick days taken in accordance with the Company's policies in effect from time to time. On the day prior to each anniversary of the Effective Date, accrued but unused vacation will be carried forward automatically to the next year without loss or limitation; including twenty eight days accrued and unused vacation from the start date of April 9, 2003; *provided, however*, that Executive shall not be permitted to take more than six weeks vacation in any 12-month period, unless (i) approved by the Board or (ii) if Executive or Company shall have notified the other party of its intention not to renew this Agreement in accordance with Section 3.

5. **Bonus.** Executive shall be eligible to receive an annual merit bonus. Payment of any bonus shall be at the sole discretion of the Board. Bonuses shall be based upon performance and other considerations as appropriately determined by the Board, including without limitation performance assessment, market assessment for comparable executive and employment terms and awards as may be deemed appropriate from time to time. The Board's first annual review of the Executive to consider any bonus shall take place no later than the end of the calendar year 2005. At this review, the Board will consider the performance of Executive for the last quarter of year 2004 and for calendar year 2005.

6. **Restricted Shares.** In connection with the Company's and Executive's entry into the Original Employment Agreement, the Company issued 100,000 shares of its Common Stock to Executive (the "**Restricted Shares**") pursuant to a Restricted Stock Agreement dated March 31, 2003 (the "**Restricted Stock Agreement**"). The Restricted Stock Agreement shall be amended and restated to replace the definitions of "Cause" and "Good Reason" contained therein with the definitions provided in Section 8(f) and to replace the term "permanent disability" as used therein with the term and definition of "Disability" set forth in Section 8(e). All other terms of the Restricted Stock Agreement shall remain the same and the Restricted Shares shall continue to vest in accordance with, and shall remain subject to the terms of, the Restricted Stock Agreement. A list of the Executive Shares, Executive Warrants, Executive Options, Restricted Shares, and any other equity awards granted to the Executive, along with a summary of the vesting schedule for each such award which is subject to vesting, is set forth on Exhibit "B" attached hereto, which Exhibit may be amended from time to time as additional equity awards are granted to the Executive.

7. **Annual Awards.** Executive shall be eligible to participate in the Company's stock option plans and programs in effect from time to time and will be eligible for consideration for grants under such plans for calendar years during the Employment Period commencing January 1, 2005 on the same basis as other members of senior management generally. Awards will be in the sole discretion of the Board, and shall be based upon performance and other considerations as appropriately determined by the Board, including without limitation performance assessment, market assessment for comparable executive and employment terms and awards as may be deemed appropriate from time to time. The Board's first annual review of the Executive to determine the size of any annual award shall take place in the first calendar quarter of 2005. At this review, the Board will consider the performance of Executive for the calendar year 2004.

8. **Termination Payments.**

(a) For Cause by the Company or Without Good Reason by Executive. The Company may terminate Executive's employment hereunder for Cause (as defined below) and Executive may terminate his employment hereunder without Good Reason (as defined below). In the event of such termination, Executive's compensation and benefits hereunder shall cease as of the effective date of termination and the Company shall pay Executive all amounts accrued but unpaid under this Agreement as of the date of such termination. The Company shall not thereafter be obligated to make any further payments to Executive. In addition, in the event of such termination, during the first ninety (90) days after the Effective Date, (i) the Company shall have the right, exercisable in the sole discretion of the Board, to repurchase the Executive Shares for a purchase price equal to the lesser of $1.65 (adjusted for stock splits, recapitalizations, or other similar event) and the then-current fair market value per share and (ii) the Executive Warrants and the Executive Options shall automatically terminate and be of no further force or effect.

(b) Upon Non-Renewal by Executive. If Executive's exercises his right not to renew this Agreement:

(1) the Company shall pay Executive all amounts accrued but unpaid under this Agreement as of the effective date of such termination;

(2) the Executive Warrant and the Executive Options shall remain outstanding in accordance with their terms; except that the Executive Warrant and the Executive Options shall be exercisable by the Executive, Executive's estate or by the Executive's beneficiaries for a period of two (2) years following termination pursuant to this Section 8(b); and

(3) any options or other convertible securities issued to Executive before the Effective Date (other than the Executive Warrant and the Executive Options) shall remain outstanding subject to their terms; except that all equity awards (including without limitation, Restricted Shares and Annual Awards) shall be exercisable by the Executive, Executive's estate or by the Executive's beneficiaries for a period of at least six (6) months following termination pursuant to this Section 8(b).

(c) Without Cause by the Company, for Good Reason by Executive or Upon Non-Renewal by Company. The Company may terminate Executive's employment hereunder without Cause or exercise its right not to renew this Agreement and Executive may terminate his employment hereunder for Good Reason. If Executive's employment is terminated by the Company without Cause (and other than due to his death or Disability), the Company exercises its right not to renew this Agreement or if Executive terminates his employment for Good Reason:

(1) the Company shall pay Executive all amounts accrued but unpaid under this Agreement as of the effective date of such termination;

(2) provided that Executive executes a release in form and substance reasonably satisfactory to the Board (the "**Release**"), and as long as Executive is in compliance with the provisions of Sections 9, 10 and 11, Executive shall continue to receive the Base Salary for a period commencing on the effective date of termination and ending on the first anniversary thereof (the "**Severance Period**"); *provided, however*, that all amounts payable under this Section 8(c)(2)

shall be subject to reduction by all amounts paid to Executive by another person or entity for employment or consulting services provided by Executive during the Severance Period, subject to Section 10(a);

(3) provided that Executive executes the Release, and as long as Executive is in compliance with the provisions of Sections 9, 10 and 11, the Company shall reimburse Executive for his cost of purchasing medical benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, during the Severance Period until such time as Executive is eligible to receive medical benefits from another person or entity comparable to those provided by Company immediately prior to his termination;

(4) the Executive Shares shall not be subject to repurchase and the Executive Warrant and the Executive Options shall remain outstanding in accordance with their terms;

(5) any options or other convertible securities issued to Executive on or after the Effective Date shall continue to vest in accordance with their vesting schedules, but only during the Severance Period, and any such unvested options or other convertible securities remaining at the termination of the Severance Period shall be forfeited; and

(6) any options or other convertible securities issued to Executive before the Effective Date shall remain outstanding subject to their terms; except that all equity awards (including without limitation, Restricted Shares and Annual Awards) shall be exercisable by the Executive, Executive's estate or by the Executive's beneficiaries for a period of at least one (1) year following termination pursuant to this Section 8(c).

(d) Death. Executive's employment hereunder shall automatically terminate in the event of Executive's death. If Executive's employment is terminated due to Executive's death, the Company shall pay to Executive's estate or legal representative all amounts accrued but unpaid under this Agreement as of the effective date of Executive's termination and thereafter shall not have any further obligation or liability under this Agreement. In addition, the Executive Shares shall not be subject to repurchase and the Executive Warrant, the Executive Options and all other options and other convertible securities shall remain outstanding subject to their terms, except that all equity awards (including without limitation, Restricted Shares and Annual Awards) shall be exercisable by the executors or administrators of the Executive's estate or by the Executive's beneficiaries for a period of at least three (3) years following termination pursuant to this Section 8(d).

(e) Disability. If Executive is incapacitated by accident, sickness or otherwise so as to render him, for any period totaling 60 or more days during any consecutive twelve-month period, or in the reasonable opinion of the Board, is mentally or physically incapable of performing the services required of him under this Agreement, the Company may terminate his employment immediately following such 60-day period by giving him written notice specifying the effective date of termination. In the event of such termination**:**

(1) the Company shall pay to Executive all amounts accrued but unpaid under this Agreement as of the last day of Executive's employment with the Company and thereafter shall not have any further obligation or liability under this Agreement;

(2) prior to such termination under this Section 8(e), Executive shall continue to receive his compensation under Section 4, provided such compensation shall be subject to reduction by any disability insurance payments received by Executive for which the Company makes premium payments; and

(3) the Executive Shares shall not be subject to repurchase and the Executive Warrant, the Executive Options and all other options and convertible securities shall remain outstanding subject to their terms; except that all equity awards (including without limitation, Restricted Shares and Annual Awards) shall be exercisable by the Executive, Executive's estate or by the Executive's beneficiaries for a period of at least three (3) years following termination pursuant to this Section 8(e).

(f) Certain Definitions.

(1) As used herein, "Cause" shall mean (i) Executive's commission of fraud in connection with Executive's employment or intentional theft, misappropriation or embezzlement of the Company's funds; (ii) Executive's conviction of or the entering of a guilty plea or plea of no contest with respect to, a felony, the equivalent thereof, or any other crime with respect to which imprisonment is the punishment; (iii) Executive's material breach of his obligations under this Agreement, which breach has not been cured as set forth below; (iv) Executive's willful violation of any express direction or requirement established by the Board in good faith and which violation has not been cured as set forth below; (v) Executive's incompetence or misconduct in the performance of, or neglect of, Executive's duties hereunder which is materially detrimental to the Company and has not been cured as set forth below; (vi) Executive's material violation of policies of the Company which adversely affects the Company and has not been cured as set forth below; (vii) Executive's use of alcohol or other drugs which interfere with the performance of Executive's duties, or the conviction of or Executive's entering of a guilty plea or plea of no contest with respect to the use of any illegal drugs or narcotics; or (viii) any other conduct by Executive that would adversely affect the Company or its reputation and has not been cured as set forth below.

All determinations of "Cause" shall be made by a majority of the Board provided, that, Executive shall abstain from any such determination and Executive's presence at a meeting in respect thereof shall not count toward the quorum at such meeting. If the Company elects to terminate Executive's employment for Cause pursuant to clauses (iii), (iv), (v), (vi) and (viii) of the definition of "Cause" and the action or inaction prompting such termination is capable of cure, the Company shall first give Executive written notice thereof, including a description of the evidence upon which the Board has relied to support such finding and, a period of forty five (45) days (the "**Cause Notice Period**") from the date of such notice to cure the action or inaction giving rise to the written notice. If such action or inaction is not cured by Executive by the end of the Cause Notice Period, as determined by the majority of the Board (Executive shall abstain from any such determination and Executive's presence at a meeting in respect thereof shall not count toward the quorum at such meeting) and communicated to the Executive in writing, such termination shall be effective upon the first day after the expiration of the Cause Notice Period.

(2) As used herein, "Good Reason" shall mean (i) any action by the Company which results in a substantial diminution in Executive's position, authority, duties or responsibilities (including status, offices, titles and reporting requirements and Executive's status as

chairman of the Board during the one-year period commencing on the Effective Date) contemplated by this Agreement, or (ii) material breach by the Company of its obligations under this Agreement or (iii) the Company's requiring the Executive to be based at any office or location other than the Company's offices in Philadelphia, Pennsylvania or within a radius of forty five (45) miles of Philadelphia, Pennsylvania, except for travel reasonably required in connection with the performance of the Executive's responsibilities hereunder, unless the Company reimburses the Executive for all reasonable out of pocket costs incurred by the Executive in connection with such relocation, including reimbursement of any federal, state or local income or payroll taxes incurred by the Executive with respect to payments made by the Executive or on the Executive's behalf so that the Executive shall be made whole on an after-tax basis. If Executive elects to terminate his employment for Good Reason pursuant to clause (ii) of the definition of "Good Reason," Executive shall first give the Board written notice thereof, including all evidence on which Executive has made such a finding and a period of forty five (45) days (the "**Good Reason Notice Period**") from the date of such notice to cure such breach. If such breach is not cured by the Company by the end of the Good Reason Notice Period with such cure being communicated to the Executive in writing, such termination shall be effective upon the first day after the expiration of the Good Reason Notice Period.

(3) Notice of Termination. Notice with respect to any purported termination of employment pursuant to clauses (iii), (iv), (v), (vi) and (viii) of the definition of "Cause" where the action or inaction prompting such termination is capable of cure shall be provided in accordance with the procedures set forth in such definition. Notice with respect to any purported termination of employment pursuant to clause (ii) of the definition of "Good Reason" shall be provided in accordance with the procedures set forth in such definition. Notice of a termination of employment pursuant to Section 8(d) shall not be required to be given; however, the Company shall promptly provide to the estate or beneficiaries of the Executive a summary of all compensation, equity awards, benefits and other assets related to the Company to which the estate or beneficiaries of the Executive shall be entitled and any vesting and other restrictions thereon pursuant to this Agreement and otherwise. Any other purported termination of employment shall be communicated by a written Notice of Termination. A "Notice of Termination" shall mean a notice that shall indicate the specific termination provision in this Agreement relied upon, shall set forth in reasonable detail the basis for termination of employment under the provisions so indicated and shall indicate the effective date of termination.

9. **Inventions and Ideas.**

(a) Disclosure. Executive shall promptly and fully disclose to the Company, with all necessary detail, all developments, know-how, discoveries, inventions, improvements, concepts, ideas, formulae, processes and methods (whether copyrightable, patentable or otherwise) made, received, conceived, acquired or written by Executive (whether or not at the request or upon the suggestion of the Company), solely or jointly with others, during the period of Executive's employment by the Company that (i) applies to the historical or current fields of business or technology of the Company or any anticipated fields of business or technology of the Company or (ii) are otherwise made through the material use of the Company's time, facilities or materials (the foregoing being hereinafter referred to collectively as the "Inventions");

(b) Assignment and Transfer. Executive agrees to assign and transfer to the Company all of Executive's rights, titles and interests in and to each of the Inventions, and Executive further agrees, at any time or from time to time promptly upon the request of the Company or its successors or assigns, to do, execute, acknowledge and deliver, or that he will cause to be done, executed, acknowledged and delivered, to the Company or its successors or assigns, as the case may be, all such further acts, transfers, assignments, deeds, powers and assurances of title, and additional papers and instruments, and will do or cause to be done all acts or things as often as may be proper or necessary or advisable for better assuring, conveying, transferring and assigning the Inventions, and effectively to carry out the intent hereof, and to vest in the Company the entire right, title and interest of Executive in and to all of the Inventions, including applications for and assignments of patents and copyrights, and all renewals thereof, as may be necessary to obtain patents and copyrights in any and all countries, and Executive will warrant the same to the Company and its successors and assigns and will cooperate in the defense of any claims or demands.

(c) Power of Attorney. If the Company is unable, after reasonable effort, to secure Executive's signature on any application for patent, copyright, trademark or other analogous registration or other documents regarding any legal protection relating to an Invention, whether because of Executive's physical or mental incapacity or for any other reason whatsoever, Executive hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as his agent and attorney-in-fact, to act for and in Executive's behalf and stead to execute and file any such application or applications or other documents and to do all other lawfully permitted acts to further the prosecution and issuance of patent, copyright or trademark registrations or any other legal protection thereon with respect to an Invention with the same legal force and effect as if executed by Executive.

10. **Noncompetition; Nonsolicitation.**

(a) During the Employment Period and until the earlier of (i) the one year anniversary from the Employment Period (ii) the complete cessation of the Company's business which business is not being continued by an assignee, successor or affiliate of the Company or (iii) the Involuntary Bankruptcy of the Company which results in the dissolution or cessation of business by the Company, Executive shall not: (1) engage or participate directly or indirectly in any business which is, or as a result of Executive's engagement or participation would become, competitive with any aspect of the business of the Company and any specific applications or technologies in which the Company has initiated significant plans to develop (the "Competing Business"), such business currently being the development and commercialization of therapeutic compounds employing RNA interference technology for the treatment of ophthalmic disorders; (2) be or become a stockholder, partner, owner, officer, director or employee or agent of, or a consultant to or give financial or other assistance to, any person or entity engaged in any such Competing Business; or (3) seek in competition with the business of the Company to procure orders from or do business with any customer of the Company in connection with a Competing Business. Notwithstanding the foregoing, (A) Executive may own publicly traded debt or equity securities of other entities as a passive investors, as long as Executive does not own more than 1% of the outstanding amount of such securities and (B) upon Executive's request, the Board in its sole discretion may elect to waive compliance by Executive with any of the provisions contained in this Section 10(a). As used herein "Involuntary Bankruptcy" shall mean the voluntary or involuntary bankruptcy (unless dismissed within ninety (90) days), or the institution of any proceeding by or against the Company seeking to

adjudicate the Company bankrupt or insolvent or seeking (unless dismissed within ninety (90) days), protection or relief of the Company or its debts under any law relating to bankruptcy, insolvency or relief of debtors.

(b) During the Employment Term and for a period of one year thereafter, Executive shall not: (i) solicit, or contact with a view to the engagement or employment by any person or entity of any person who is, or was within the six-month period preceding the termination of Executive's employment hereunder, an employee of the Company; (ii) seek to contract with or engage (in such a way as to adversely affect or interfere with the business of the Company) any person or entity who has been contracted with or engaged to manufacture, assemble, supply or deliver products, goods, materials or services to the Company; or (iii) engage in or participate in any effort or act to induce any of the customers, associates, consultants, or employees of the Company to take any action which might be disadvantageous to the Company.

11. **Confidentiality.** Executive acknowledges a duty of confidentiality owed to the Company and Executive agrees not to, at any time during or after the Employment Period, retain in writing, use, divulge, furnish, or make accessible to anyone, without the express authorization of the Board, any trade secret, development plans, customer information, processes, product information and any other private or confidential information or knowledge of the Company, obtained or acquired by Executive while providing services to or while employed by the Company. Executive acknowledges that all development plans, computer software, business cards, telephone lists, customer lists, price lists, contract forms, catalogs, Company books, records, and files and know-how acquired while providing services to or while employed by the Company are the property of the Company and shall not be duplicated, removed from the Company's possession or premises or made use of other than in pursuit of the Company's business or as may otherwise be required by law or any legal process, and, upon termination of employment for any reason, Executive shall deliver to the Company, without further demand, all copies thereof which are then in Executive's possession or under Executive's control.

12. **Injunctive Relief.** Executive acknowledges that his compliance with the agreements in Sections 9, 10 and 11 hereof is necessary to protect the good will and other proprietary interests of the Company and that Executive has been and will be entrusted with highly confidential information regarding the Company and its technology and is conversant with the Company's affairs, its trade secrets and other proprietary information. Executive acknowledges that a breach of any of his agreements in Sections 9, 10 and 11 hereof will result in irreparable and continuing damage to the Company for which there will be no adequate remedy at law; and Executive agrees that, in the event of any breach of the aforesaid agreements, the Company and its successors and assigns shall be entitled to injunctive relief and to such other and further relief as may be proper.

13. **Survival.** It is expressly understood and agreed that all covenants and agreements set forth in Sections 8, 9, 10, 11, 12, 13 and 14 shall survive any expiration or termination of this Agreement.

14. **Miscellaneous.**

(a) Assignment. Executive shall not assign his obligations hereunder to any other person or entity, and any assignment by Executive in violation of the terms hereof shall be null and void. Subject to the foregoing, the rights and obligations of the parties under this Agreement shall inure to the benefit of, and shall be binding upon, the parties' respective successors and assigns.

(b) Notices. All notices, requests, consents and other communications required or permitted hereunder to any party shall be deemed to be sufficient if contained in a written instrument delivered in person or duly sent by certified mail, postage prepaid; by an overnight delivery service, charges prepaid; or by confirmed by telecopy; addressed to such party at the address set forth below or such other address as may hereafter be designated in writing by the addressee to the addressor:

if to the Company, to:

Acuity Pharmaceuticals, Inc.
3701 Market Street
Philadelphia, PA 19104
Attention: Chairman of the Compensation Committee
and Secretary of the Company

with a copy to:

Pepper Hamilton LLP
3000 Two Logan Square
Philadelphia, PA 19103
Attention: Ilan Katz, Esq.

if to Executive, to:

Dale Pfost
1525 Bardsey Dr.
Ambler, PA 19002

with a copy to:

Stark & Stark, P.C.
993 Lenox Drive
Lawrenceville, NJ 08648
Attention: Rachel Lilienthal Stark, Esq.

(c) Entire Agreement. This Agreement, together with the Termination Agreement and the Restricted Stock Agreement, contains the entire agreement between the Company and Executive with respect to the subject matter hereof and shall supersede any and all prior agreements, and there have been no oral or other agreements of any kind whatsoever as a condition precedent or inducement to the signing of this Agreement or otherwise concerning this Agreement or the subject matter hereof.

(d) Waivers and Further Agreements. Any waiver of any term or condition of this Agreement shall not operate as a waiver of any other breach of such term or condition or any other term or condition, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision hereof; provided, however, that no such written waiver, unless it, by its own terms, explicitly provides to the contrary, shall be construed to effect a continuing waiver of the provision being waived and no such waiver in any instance shall constitute a waiver in any other instance or for any other purpose or impair the right of the party against whom such waiver is claimed in all other instances or for all other purposes to require full compliance with such provision.

(e) Amendments. Any amendment to this Agreement shall be in writing and signed by both parties hereto.

(f) Severability. If any provision of this Agreement shall be held or deemed to be, or shall in fact be, invalid, inoperative or unenforceable as applied to any particular case in any jurisdiction or jurisdictions, or in all jurisdictions or in all cases, because of the conflict of any provision with any constitution or statute or rule of public policy or for any other reason, such circumstance shall not have the effect of rendering the provision or provisions in question invalid, inoperative or unenforceable in any other jurisdiction or in any other case or circumstance or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to the extent that such other provisions are not themselves actually in conflict with such constitution, statute or rule of public policy, but this Agreement shall be reformed and construed in any such jurisdiction or case as if such invalid, inoperative or unenforceable provision had never been contained herein and such provision reformed so that it would be valid, operative and enforceable to the maximum extent permitted in such jurisdiction or in such case.

(g) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and in pleading or proving any provision of this Agreement, it shall not be necessary to produce more than one of such counterparts.

(h) Section Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

(i) Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the law (other than the law governing conflict of law questions) of the Commonwealth of Pennsylvania.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ACUITY PHARMACEUTICALS, INC.

By: David A. Eichler
Title: Director & Member of Compensation Committee

EXECUTIVE:

/s/ Dale R. Pfost
Dale R. Pfost

EXHIBIT 99.1

Contacts:
Corporate:
Dr. Dale Pfost
215 966 6180

Media:
GendeLLindheim BioCom Partners
Barbara Lindheim
212 918-4650

ACUITY PHARMACEUTICALS AND FROPTIX CORPORATION AGREE TO MERGERS WITH PUBLIC SHELL; NEW COMPANY TO DEVELOP AND MARKET DRUGS FOR DISORDERS OF THE EYE

—Combined Company to be Re-Named Opko Corporation—

MIAMI, FL—March 27, 2007—Acuity Pharmaceuticals and Froptix Corporation, privately owned pharmaceutical companies developing novel drugs to treat serious diseases of the eye, and eXegenics, Inc. (OTC BB: EXEG), a publicly-traded company with no active operations, have executed a merger agreement that will bring the three companies under one corporate umbrella. The combined company will be re-named Opko Corporation. It will be headquartered in Miami, Florida and intends to apply to have its shares listed on the American Stock Exchange (AMEX).

Acuity's product portfolio includes the pioneering gene silencing agent bevasiranib, which has successfully completed Phase ll clinical trials for wet age-related macular degeneration (wet AMD) and diabetic macular edema (DME); a novel product for conjunctivitis in Phase I clinical development; and a pipeline of preclinical candidates to treat serious ophthalmic disorders. Froptix has a number of molecules in preclinical development to treat dry age-related macular degeneration (dry AMD) and other ophthalmic diseases. The new company also intends to develop selected diagnostic products that are complementary to its ophthalmic therapies.

Dr. Phillip Frost, former chief executive officer and chairman of IVAX Corporation, will become chairman and chief executive officer of Opko. Dr. Jane Hsiao, former vice chairman and chief technical officer of IVAX Corporation and Steven D. Rubin, former senior vice president and general counsel of IVAX Corporation, will serve on Opko's Board of Directors. Dr. Dale R. Pfost, currently chairman, president and chief executive officer of Acuity Pharmaceuticals, will become president of Opko.

As part of the transaction, The Frost Group, a private equity group headed by Dr. Frost, has agreed to provide Opko with a $12 million line of credit. A portion of this line of credit has already been committed to help fund the transition to the new organization. Proceeds from this line of credit, along with the approximately $16 million of cash held by eXegenics, are expected to be sufficient to fund the company's upcoming Phase lll trial of bevasiranib as maintenance therapy for wet AMD in combination with Lucentis® and to support continued progress in other programs.

"We believe ophthalmologic disorders offer major opportunities for improved therapies, and we are optimistic that our new company will develop significant products for the maintenance and restoration of vision," said Dr. Frost. "To date, bevasiranib has demonstrated the potential to treat wet AMD along with an excellent clinical safety

profile, and we intend to pursue advanced clinical trials for its use as part of a treatment regimen in combination with the VEGF antagonist drugs currently prescribed for this condition. Froptix is developing novel technology for the treatment of dry AMD, a more prevalent disorder for which there currently is no effective therapy. The combined product pipelines contain a variety of other promising compounds for other inflammatory, infectious and degenerative diseases of the eye."

The transaction between the three parties is expected to close today.

About the Merged Companies

Philadelphia-based Acuity Pharmaceuticals is an ophthalmic pharmaceutical company applying proprietary technologies to the treatment and prevention of diseases of the eye. Acuity's lead clinical compound, bevasiranib, an RNA interference-based molecule targeting vascular endothelial growth factor (VEGF), completed a Phase II trial in wet AMD and a pilot Phase ll trial in DME. Bevasiranib demonstrated good safety and encouraging signs of biological activity in both studies. Acuity is applying its drug development expertise to a growing pipeline of novel agents for ophthalmic conditions and is also developing proprietary technologies for ocular drug delivery in support of these programs.

Froptix Corporation has licensed exclusive rights to technology developed at the University of Florida in Gainesville relating to small molecule therapeutics for retinal and macular degeneration. It has lead compounds for the treatment of dry AMD and retinitis pigmentosa and an extensive pipeline of additional small molecule clinical candidates. Over 35 million patients suffer from dry AMD in the developed world, yet there are currently no available treatment options. In some patients, dry AMD progresses to wet AMD, a leading cause of adult blindness.

eXegenics, Inc. does not currently have active operations. Previously, it was engaged in the research, creation and development of drugs for the treatment and prevention of cancer and infectious diseases

This press release contains "forward-looking statements," as that term is defined under the Private Securities Litigation Reform Act of 1995 (PSLRA),regarding product development efforts and other non-historical facts about our expectations, beliefs or intentions regarding our business, technologies and products, financial condition, strategies or prospects. Many factors could cause our actual activities or results to differ materially from the activities and results anticipated in forward-looking statements. These factors include those described in our filings with the Securities and Exchange Commission, as well as risks inherent in funding, developing and obtaining regulatory approvals of new, commercially-viable and competitive products and treatments, including the risks that advanced clinical trials for our lead product candidate, bevasiranib, may not be commenced or completed on a timely basis or at all, that any of our compounds under development, including bevasiranib, may fail, may not achieve the expected results or effectiveness and may not generate data that would support the approval or marketing of products for the indications being studied or for other indications. In addition, forward-looking statements may also be adversely affected by general market factors, competitive product development, product availability, federal and state regulations and legislation, the regulatory process for new products and indications, manufacturing issues that may arise, patent positions and litigation, among other factors. We do not undertake any obligation to update forward-looking statements. We intend that all forward-looking statements be subject to the safe-harbor provisions of the PSLRA.